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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 518 29

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, AND ALMERINDO PORTFOLIO, TREASURER OF THE CITY OF NEW YORK, PETITIONERS,

vs.

CARTER & WEEKES STEVEDORING COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

LAW

PETITION FOR CERTIORARI FILED OCTOBER 17, 1946.

CERTIORARI GRANTED NOVEMBER 19, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 518

JOSEPH D. McGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, AND ALMERINDO PORTFOLIO, TREASURER OF THE CITY OF NEW YORK, PETITIONERS,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

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[fol. 1]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of The Application of Carter & Weekes Stevedoring Company, Petitioner; For an order against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Statement Under Rule 234

This is a proceeding brought pursuant to Article 78 of the Civil Practice Act to review a final determination by the respondent Comptroller, of New York City Business Tax deficiency for the years 1937 to 1940 (inclusive) and for an order annulling such determination and directing refund of deposit made by petitioner.

This proceeding was commenced on February 24, 1944 by the service of petition and notice of application on Joseph D. McGoldrick and Almerindo Portfolio, Comptroller and Treasurer, respectively, of the City of New York.

The respondents answered the petition on April 19, 1944.

There has been no change in the parties or attorneys herein.

[fol. 2] In Supreme Court of New York, County of New York, Special Term—Part I

Present: Hon. Aaron J. Levy, Justice.

No. 3817/1944

In the Matter of The Application of Carter & Weekes Stevedoring Company, Petitioner; For an order against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Pursuant to Article 78 of the Civil Practice Act

Order Transferring Proceeding to Appellate Division —May 3, 1944

The petitioner, Carter & kes Stevedoring Company, having duly moved this C for an order, among other

[fol. 3] things, transferring these proceedings for disposition to the Appellate Division of the Supreme Court, First Judicial Department,

Now, upon reading and filing the notice of motion herein dated February 24th, 1944, the petition of Carter & Weekes Stevedoring Company verified February 24th, 1944, together with proof of service of a copy of said papers upon the respondents, in support of said motion, and upon reading and filing the answer of the respondents, Joseph D. McGoldrick as Comptroller of the City of New York, and Almerindo Portfolio as Treasurer of the City of New York, verified April 19th, 1944, and the return of said respondents bearing date the 19th day of April, 1944, and after hearing Edwin V. Hellawell, attorney for the petitioner, in support of the application, and Ignatius M. Wilkinson, Esq., Corporation Counsel, Samuel J. Warms, Esq., of counsel, attorney for the respondents, consenting to the granting of the motion to the extent hereinafter provided, and after due deliberation having been had thereon,

Now, on motion of Edwin V. Hellawell, attorney for the petitioner, it is

Ordered, that the instant application be and the same hereby is granted to the extent of directing that the proceeding initiated by the petition of Carter & Weeks Stevedoring Company verified February 24th, 1944, be transferred for disposition to a Term of the Appellate Division of the Su-

[fol. 4] preme Court to be held in and for the First Judicial Department, and that all questions relating to assessment of respondent, Joseph D. McGoldrick as Comptroller of the City of New York, against petitioner, in the sum of $2,352.75, be referred to said Appellate Division for disposition, and it is further

Ordered, that a complete printed record of the proceedings before the respondent, Joseph D. McGoldrick as Comptroller of the City of New York, and of the proceedings upon this application, be filed in said Appellate Division in accordance with its rules, in order that it may review the matters at issue herein in accordance with Section 1296 of the Civil Practice Act.

Enter.

A. J. L., J. S. C.

[fol. 5] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

[Same Title]

NOTICE OF APPLICATION

Please Take Notice that on the annexed petition of Carter & Weekes Stevedoring Company, verified February 24th, 1944, the undersigned, pursuant to Article 78 of the Civil Practice Act, will move this Court at a Special Term, Part I thereof, to be held in and for the County of New York at the County Courthouse, Foley Square, New York, New York, on the 6th day of March, 1944, at 10:00 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard,

(1) for an order by this Court transmitting the complete record of this proceeding to the Appellate Division, First Department, for a review of the determination of respondent, Joseph D. McGoldrick, Comptroller of the City of New York, referred to in the aforesaid petition, or

(2) in the alternative, for an order by this Court annulling or correcting said determination and directing the refund with interest of the sum of $2,352.75 deposited with the City Treasurer of the City of New York, together with costs and disbursements, and granting petitioner such other and further relief as may be just.

[fol. 6] Please Take Further Notice that, pursuant to Section 1291 of the Civil Practice Act, you are required to serve at least two days prior to the return day of this motion a verified answer, annexing thereto a certified transcript of the record of proceedings subject to review or consideration and any and all affidavits or other written proof to be used herein.

Dated, New York, N. Y., February 24th, 1944.

Yours etc., Edwin V. Hellawell, Attorney for Petitioner, Office & P. O. Address, 70 Pine Street, Borough of Manhattan, City of New York.

To: Joseph D. McGoldrick, Esq., Comptroller of the City of New York, Municipal Building, New York, New York; Almerindo Portfolio, Esq., Treasurer of the City of New York, Municipal Building, New York, New York.

[fol. 7] IN SUPREME COURT OF NEW YORK,
COUNTY OF NEW YORK

[Same Title]

PETITION

To the Supreme Court of the State of New York:

The petition of Carter & Weekes Stevedoring Company respectfully shows to the Court and alleges:

1. At all times herein mentioned, petitioner was and is now a corporation organized under the laws of the State of West Virginia, duly authorized to conduct business in the State of New York, and with an office and place of business at 2 Broadway, in the Borough of Manhattan, City of New York, and was at all such times and still is engaged in the general stevedoring business.

2. At all times herein mentioned, respondent, Joseph D. McGoldrick, was and is now the Comptroller of the City of New York, and respondent, Almerindo Portfolio, was and is now the Treasurer of the City of New York.

3. That pursuant to the authority of Chapter 873 of the Laws of the State of New York of 1934, as amended, the Council of the City of New York adopted Local Laws known [fol. 8] as a "Business Tax" or a "Gross Receipts Tax," and which are as follows:

Local Law No. 22 of the Year 1937
Local Law No. 20 of the Year 1938
Local Law No. 103 of the Year 1939
Local Law No. 78 of the Year 1940

all of which Local Laws imposed a tax measured by gross receipts for the privilege of carrying on or exercising for gain or profit within the City of New York, any trade, business or commercial activity, and which Local Laws provided for filing of tax returns for the years in question.

4. That pursuant to such Local Laws and on or before the day of each of the years specified therein for filing tax returns showing gross receipts for the years 1937, 1938, 1939 and 1940, namely, on or before June 15th of each of the years 1938, 1939, 1940 and 1941, respectively, petitioner

filed with the Collector of the City of New York returns showing its entire gross receipts for the calendar years 1937, 1938, 1939 and 1940, respectively.

5. It was shown by each of such returns filed by petitioner that a small amount of the total gross receipts of petitioner for each of the years stated (and which amount was stated therein) was not received for the loading and unloading of vessels in interstate and foreign trade and commerce. As to such receipts, petitioner in each of such years paid a tax to the Collector of the City of New York at the rate specified in such Local Laws.

[fol. 9] It was further shown by such returns that the balance of petitioner's gross receipts (the amount of which was stated) for each of the years stated was derived from the loading and unloading of vessels in foreign and interstate commerce, and as to this portion of such gross receipts petitioner did not pay a business tax and stated in each of its returns that the reason for its not doing so was that such receipts are not subject to local taxation.

6. That subsequently and on or about the 14th day of August, 1942, the Comptroller of the City of New York notified petitioner of a business tax deficiency in the amount of $1,828.97, which purported to be the business tax (with interest and penalty to the time of such notification) on that part of the gross receipts of petitioner which were derived from loading and unloading of vessels in foreign and interstate commerce for the years 1937, 1938, 1939 and 1940, and as to which portion of such gross receipts petitioner had, as aforesaid, claimed in its tax returns for each of such years that it was not subject to such local taxation.

7. Subsequent to the receipt of such notice of tax deficiency and pursuant to the provisions of law, and within the period required thereby, petitioner requested the Comptroller of the City of New York to grant a hearing in connection with such tax deficiency.

8. Thereafter, hearings were held before an officer representing the Comptroller on June 4th, 1943, July 30th, 1943 and on September 15th, 1943.

[fol. 10] 9. Petitioner adduced testimony and evidence in support of its application to cancel such deficiency and to annul the tax with interest and penalty thereon. No testi-

mony or evidence was offered or submitted by the Comptroller of the City of New York.

10. By letter dated February 10th, 1944, the Comptroller of the City of New York communicated to petitioner his decision by which said Comptroller finally and irrevocably determined petitioner's total business tax for the years 1937, 1938, 1939 and 1940 in the amount of $1,594.54, with penalty and interest of $758.21, a total of $2,352.75. A true and correct copy of such final determination is annexed and made a part hereof.

11. That petitioner has paid to the City of New York such general business tax on all its receipts derived from all its activities during the years 1937, 1938, 1939 and 1940, other than receipts derived from loading and unloading of vessels in foreign and interstate commerce.

12. The operations of petitioner which resulted in the gross receipts involved herein can be summarized as follows:

Petitioner as contracting stevedore, is engaged by ship owners to load or unload vessels either destined to or arriving from a foreign port or ports, or destined to or arriving from ports in States other than in the State of New York. Petitioner does not load or unload vessels engaged in intrastate commerce. 95% of the vessels loaded or unloaded by petitioner are engaged in foreign trade and 5% [fol. 11] of the vessels so loaded or unloaded are engaged in interstate trade or commerce.

In loading a vessel, petitioner's first step is the securing of a plan showing the length, beam and draft, the deadweight and gross tonnage of the vessel, and the number, location and dimensions of each cargo hold or other spaces where cargo is to be stowed. Petitioner also ascertains the location of hatches, bulkheads and stanchions leading to or contained in each cargo hold, and that of fuel and water tanks, and the places for stowage of ship's stores and their various capacities. The capacity of the ship's winches and booms must also be learned:

All of the foregoing are important factors, since from such facts must be determined by petitioner the placing within the ship of the various classes of cargo to be loaded.

Another important factor that petitioner must consider at the outset in stowage of cargo is the effect which the con-

sumption of ship's stores and of contents of fresh water and fuel tanks during the voyage will have on the stability and general seaworthiness of the vessel during its voyage.

The nature of the cargo to be stowed is next learned and if the vessel is to stop at more than one port of call, the cargo destined to each port must be ascertained so that cargoes to be delivered at the first port of call will be available for discharge without disturbing cargo destined to a succeeding one.

The weight by volume of the various classes of cargo and the nature of the cargoes to be loaded is learned so that the weight may be distributed in such a manner that [fol. 12] the trim of the ship will render her seaworthy at the offset and throughout the voyage.

In conducting stevedoring operations, petitioner has in its employ, in addition to its executives, a superintendent in charge of each ship, foremen, hatch tenders, longshoremen, timekeepers, carpenters and winchmen.

Before petitioner's operations are commenced, the cargo to be loaded has already been delivered by others and has been placed by them on the dock of the steamship company as near as convenient to the side of the vessel.

The ships to be loaded are equipped with booms, usually four in number, attached to both forward and after masts, and usually adjacent to the cargo hatches. From these booms are suspended steel cables running through a block to the end of which a large hook is fastened. The cables running through a series of blocks are run on to the drum of a winch. Winchmen and others in the employ of petitioner operate such tackle.

What is known as a "draft," or collection of cargo, is made up on the dock by petitioner's employees and enclosed in slings. These slings are engaged by the hook at the end of the tackle mentioned and, on a signal from one of petitioner's employees, the cargo is raised by the tackle and winches and carried overhead to a point over the hatch to be loaded where, on further signal, it is lowered through the hatch into the ship's hold. Longshoremen in petitioner's employ in the hold of the vessel stow the cargo.

A large proportion of petitioner's services are performed in the hold or on other portions of the vessel to be loaded. [fol. 13] The entire balance of the services rendered by petitioner are performed on the dock at a point convenient to the side of the ship.

The unloading of a vessel follows a course that is the reverse of the foregoing.

This work is completely done by petitioner's own employees who are controlled and directed by petitioner's supervisory employees.

In loading a vessel the services never commence at any place other than at a convenient point near the side of a vessel and end in the hold of the vessel. In unloading a vessel, the services commence in the hold and end at a convenient point alongside the vessel on the dock.

13. The action of the Comptroller in making such final determination of business tax deficiency was unjust, erroneous and contrary to law for the following reasons, among others:

(1) The operations of petitioner resulting in its gross receipts on which the Comptroller has determined tax liability constitute foreign and interstate commerce, and the action of the Comptroller is an attempt to levy on such commerce.

(2) The Enabling Act, Chapter 873, Laws of 1934, as amended, and the Local Laws enacted by the City Council, do not authorize the City of New York to levy a tax upon the gross receipts received by petitioner for the services rendered by it and which are described herein.

(3) If such Enabling Act, as amended, and Local Laws of the City of New York purported to authorize the im- [fol. 14] position of said tax with respect to petitioner's gross receipts involved herein, said Act and the Local Laws pursuant to which the tax was levied, are unconstitutional and invalid for the following reasons:

(a) Said laws are unconstitutional and in violation of Article I, Section 8, Clause 3 of the Constitution of the United States.

(b) Said laws are unconstitutional and in violation of the Fourteenth Amendment of the Constitution of the United States.

(c) Said laws are unconstitutional and in violation of Article I, Section 10, Clause 2 of the Constitution of the United States.

(4) As to petitioner, said laws are unconstitutional and invalid as an unlawful interference with the paramount power of Congress over navigation upon the navigable waters of the United States.

14. That heretofore and on the 24th day of February, 1944, and pursuant to provisions of law wherein it is required that before petitioner shall be entitled to review the final determination of the Comptroller with respect to such business tax deficiency, petitioner shall deposit with the Treasurer of the City of New York the amount so finally determined, petitioner deposited with the Treasurer of the City of New York the sum of $2,352.73, the amount of the tax deficiency as determined by the Comptroller of the [fol. 15] City of New York. That on the said 24th day of February, 1944, petitioner filed with the Comptroller of the City of New York an undertaking in the sum of $500.00, executed by Travelers Indemnity Company and approved by a Justice of the Supreme Court, to the effect that if this proceeding be dismissed or the tax shown by the final determination of the Comptroller confirmed, that petitioner will pay all costs and charges which may accrue in the prosecution of these proceedings.

15. No previous application for the relief sought herein has been made.

Wherefore, petitioner prays (1) that an order be made by this Court transmitting the complete record of this proceeding to the Appellate Division, First Department, for a review of the determination of respondent, Joseph D. McGoldrick, Comptroller of the City of New York, referred to in the aforesaid petition, or (2) in the alternative, for an order by this Court annulling or correcting said determination, and directing the cancellation of such tax deficiency and the refund with interest of the sum of $2,352.74 heretofore deposited by petitioner with the Treasurer of the City of New York, together with costs and disbursements, and granting petitioner such other and further relief as may be just.

Carter & Weekes Stevedoring Company, by Charles E. Dougherty, President.

(Verified by C. E. Dougherty, February 24, 1944.)

[fol. 16] FINAL DETERMINATION OF COMPTROLLER, ANNEXED TO PETITION

The City of New York
Bureau of Excise Taxes
350 Broadway, New York

In Reply Refer to: Final Determination R-201 h 7/42.

Carter & Weekes Stevedoring Co., A-11-13 Produce Exchange, New York, N. Y.

Date Feb. 10, 1944.

In Re: Business Tax. Audit No. FB 14602. Reg. No. M 133438. Name Carter & Weekes Stevedoring Company. Address A-11-13 Produce Exchange, New York, N. Y. O. D. $1,828.97.

GENTLEMEN:

The Comptroller of the City of New York pursuant to Chapter 41 of the Administrative Code hereby gives notice that there is due and payable to the City of New York a Business Tax Deficiency in the amount of $2,352.75 for the period from 1/1/37 to 12/31/40 as set forth below.

Summary of Deficiency

Period	Tax	Penalty Interest	Total
1937	410.49	249.58	660.07
1938	359.50	201.32	560.82
1939	362.12	159.33	521.45
1940	462.43	147.98	610.41
Totals Due	1,594.54	758.21	2,352.75

[fol. 17] This determination is final and irrevocable. Additional interest accrues at the rate of 1% per month unless payment is received within ten (10) days. Failure to remit promptly will cause the Treasurer of the City of New York to issue and docket a warrant as provided by the law governing "Proceedings to recover tax."

Make your remittance to the City Collector. In order to obtain proper credit for payment, please enclose a copy of this notice.

Very truly yours, (Signed) George Marlin, Special Deputy Comptroller.

SW:ag. 10/6/43.

IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

[Same Title]

ANSWER

The respondents, by Ignatius M. Wilkinson, Corporation Counsel of the City of New York, their attorney, for their verified answer to the petition herein, upon information and belief, respectfully:

[fol. 18] 1. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the petition numbered "1", "4" and "11", but respectfully refer to the transcript of the record of the proceedings had before the Comptroller of the City of New York, for the evidence produced by the petitioner as well as other matter, relating to the said allegations of the petition, and for the legal effect thereof.

2. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraph of the petition numbered "5", except that they admit that the petitioner filed returns and paid to the Collector of the City of New York taxes appearing due thereon, on only a portion of its gross receipts for each of the years 1937, 1938, 1939 and 1940, and that it claimed that the balance thereof was not subject to local taxation, but respectfully refer to the transcript of the record of the proceedings had before the Comptroller of the City of New York for the evidence relating thereto, submitted by the petitioner.

3. Deny the allegations contained in the paragraph of the petition numbered "6", except that they admit that on or about the 14th day of August, 1924, the Comptroller of the City of New York notified the petitioner of a business tax deficiency in the amount of $1,828.97 for taxes measured by petitioner's gross receipts during the calendar years 1937, 1938, 1939 and 1940.

4. Deny the allegations contained in the paragraph of [fol. 19] the petition numbered "9", except that they admit that the petitioner produced evidence in connection with its application to annul the said business tax deficiency, together with the interest and penalties thereon.

5. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraph of the petition numbered "12", and respectfully refer to the transcript of the testimony given before the Comptroller of the City of New York, for the evidence given by the petitioner, relating to the substance of the said allegations, and for the legal effect thereof.

6. Deny the allegations contained in the paragraph of the petition numbered "13".

As and for a Statement of the Grounds upon Which the Comptroller Acted in Making the Determination Complained of, the Respondents Further Allege, upon Information and Belief:

7. That between July 1, 1937 and June 30, 1941, the petitioner was engaged in and carried on within the City of New York, a business as defined in the local laws here in question, for gain and profit. By virtue of the fact that the petitioner was engaged in business as aforesaid in the City of New York, it became subject to the tax measured by its gross receipts or income, imposed by Local Laws 22 of 1937, 20 of 1938, 103 of 1939, and 78 of 1940.

8. That on or about August 14, 1942, the respondent, the [fol. 20] Comptroller of the City of New York, served upon the petitioner a written notice of a deficiency of business tax, with schedules attached, under Local Laws 22 of 1937 as amended, 20 of 1938, 103 of 1939 and 78 of 1940, for the annual privilege periods embraced within the period between July 1, 1937 and July 1, 1941, under said local laws in the amount of $1,594.54, besides penalties and interest amounting to $751.21, or in the aggregate amount of $2,352.75, and covering the annual calendar measuring periods comprised within the period from January 1, 1937 to December 31, 1940, inclusive.

9. That thereafter and on or about August 19, 1942, the petitioner made application for a hearing with respect to said deficiency assessment.

10. That thereafter and on June 4th, September 15th, and July 30th, 1943, hearings were duly held before the Comptroller of the City of New York, pursuant to the provisions of the local laws in question.

11. That thereafter and on or about February 10, 1944, the Comptroller of the City of New York made a final determination that there was due and payable from the petitioner to the respondent, Joseph D. McGoldrick, as Comptroller of the City of New York, the business tax deficiency of $2,352.75, of which the sum of $1,594.54 represented the tax, and the sum of $758.21 represented interest and/or penalties.

12. That annexed hereto and made a part of this answer [fol. 21] is a duly certified transcript of the record of the proceedings had before the Comptroller, mentioned in the petition herein, and subject to review or consideration in this proceeding.

13. That the evidentiary facts upon which the determination of the respondent, the Comptroller of the City of New York, was based, are set forth and contained in the certified transcript of the record of the proceedings, the minutes of the testimony taken at the hearings, the written documents introduced in evidence at the hearings, and all the correspondence and other documents relating to and supporting the determination of the said respondent, the Comptroller of the City of New York. The said evidentiary facts show that there was competent proof of all of the facts necessary to be proved in order to authorize the making of the determination by the said respondent.

14. That the determination of the respondent, the Comptroller of the City of New York, complained of by the petitioner in this proceeding, is in conformity with the law and the facts contained in the aforesaid record of the proceedings had before the Comptroller, annexed hereto and made a part hereof.

15. That this proceeding requires the determination of questions relating to the sufficiency and weight of evidence submitted to the Comptroller, within the purview of subdivisions 6 and 7 of § 1296 of the Civil Practice Act, and, hence, unless the petition is dismissed as a matter of law, this proceeding is a proper one to be transferred for disposition to a term of the Appellate Division, First Department.

[fol. 22] Wherefore, the respondents pray for an order herein dismissing the petition, or if this be denied, then in the alternative, for an order directing that the instant

proceeding be transferred for disposition to a Term of the Appellate Division, First Department; and for a final order dismissing the proceeding on the merits, and for such other and further relief as to the Court may seem just and proper, together with the costs of this proceeding.

Dated: April 18, 1944.

Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York.

(Verified by A. McK. Sylvester, Apr. 19, 1944.)

[fol. 23] In Supreme Court of New York, County of New York

[Same Title]

Return

To the Supreme Court of the State of New York:

Alvin McK. Sylvester does hereby certify this transcript of the record of the proceedings herein, consisting of all and singular his ruling and assessment in the premises, together with his proceedings, decisions, determinations and actions, and all and singular the evidence, documents, records and all other papers before him or which were submitted to him relative to or concerning his determination to tax against the petitioner pursuant to Local Laws Nos. 22 of 1937, as amended, 20 of 1938, 103 of 1939 and 79 of 1940.

1. Petitioner's sworn returns of business tax due pursuant to the local laws herein involved.

2. Notice, dated August 14, 1942, from the respondent, Joseph D. McGoldrick, as Comptroller of the City of New York, advising petitioner of business tax deficiency assessments of $1,829.97, together with the schedules annexed thereto computing said deficiency.

3. Letter from the petitioner to the respondent, Joseph [fol. 24] D. McGoldrick, as Comptroller of the City of New York, denying liability for the additional taxes

set forth in the deficiency assessment, and demanding a hearing on the determination with respect thereto.

4. Minutes of hearings held pursuant to said request on June 4, 1943, September 15, 1943 and July 30, 1943, together with all exhibits received in evidence or for identification at said hearings.

5. Notice of final determination, dated February 10, 1944, rendering final notice of deficiency assessment.

6. Undertaking, dated February 23, 1944, executed by the Travelers Indemnity Company and approved as to form and sufficiency by Hon. Kenneth O'Brien, a Justice of the Supreme Court of the State of New York.

7. A statement of the Assistant Deputy City Collector, dated February 25, 1944, certifying that the petitioner deposited with the Treasurer of the City of New York the sum of $2,352.75 on February 24, 1944, as a condition precedent to the institution of this proceeding.

This return is based upon the records, proceedings and papers on file in the office of the Comptroller of the City of New York.

In Witness Whereof, the Deputy Comptroller of the City of New York has hereunto set his hand this 19th day of April, 1944.

Alvin McK. Sylvester, Deputy and Acting Comptroller of the City of New York.

(Here follow 2 photolithographs, side folios 25-26)

TAX RETURN FOR YEAR 1937
(Referred to in Foregoing Return)

Form 30 B

The City of New York

Department of Finance

EMERGENCY REVENUE DIVISION

THIS TAX IS DUE AND PAYABLE JUNE 1938

RETURN OF EXCISE TAX ON GROSS RECEIPTS

Pursuant to Local Law No. 20 of 1935, as amended

Local Law No. 21 of 1937, as amended, imposes a tax to raise revenue for the purpose of relieving the people of the City of New York from the hardships and suffering caused by unemployment

GROSS RECEIPTS FOR THE CALENDAR YEAR 1937

or Period Began ____ 193__ and Ended ____ 193__

A period other than the calendar year 1937 to be used only by a person starting business after January 1, 1937 as set forth in Section 3 (c) of the law (See Instruction Sheet).

Page 1

ORIGINAL

File Code

M 133438

Payment Code

MAKE CHECKS PAYABLE TO CITY COLLECTOR

Send this Return with Remittance On or Before June 15, 1938 to One of the Borough Offices of the Bureau of City Collections indicated on the Reverse Side Hereof

(This Space for Name and Address Only)

CARTER & SEEKS STEVEDORING B-31867
A-11-13 PRODUCT EXCH CO
NEW YORK N Y

U.S. 2/14/43pc

ANSWER ALL QUESTIONS ON REVERSE SIDE HEREOF

KIND OF BUSINESS _____

DATE BUSINESS COMMENCED _____

MAKE CHECKS PAYABLE TO CITY COLLECTION

Line and Instruction Number	GROSS RECEIPTS		
1.	Receipts from sales in trade or business (Less Sales returned)		
2.	Less—Net receipts from sales in interstate commerce		
3.	Net receipts from sales in foreign commerce		
4.	Total (Items 2 and 3)		
5.	Net receipts from sales in trade or business (Item 1 minus Item 4)		
6.	Receipts from production or operation		
7.	Receipts from [illegible]		598 89
8.	Receipts from dividends on stocks of domestic and foreign corporations		375 00
9.	Receipts from royalties		
10.	Receipts from premiums from the business of insurance in the City of New York		
11.	Other receipts from commercial or business transactions (Explain in Schedule A)		
12.	Total gross receipts to be used as a measure in computing the tax (Items 5 to 11 inclusive) *(If this return is for a period less than one year compute the tax as indicated below)*		1 250 00
13.	Tax due the City of New York (1/10 of 1% of Item 12)		1 25
14.	Penalties (See Instruction Sheet)		
15.	Total tax and penalties (Items 13 and 14)		1 25

COMPUTATION OF TAX BASED ON A RETURN FOR A PERIOD LESS THAN ONE YEAR (SEE INSTRUCTION SHEET)

16.	Total gross receipts (Item 12)		
17.	Number of days covered by this return (Period shown above)	Days	
18.	Total gross receipts for a year (same basis) to be used as a measure in computing the tax (Item 17 multiplied by 365 and the product thereof divided by Item 16)		
19.	Tax due the City of New York (1/10 of 1% of Item 18)		
20.	Penalties (See Instruction Sheet)		
21.	Total tax and penalties (Items 19 and 20)		

AFFIDAVIT

I swear (or affirm) that this return of gross receipts, including the accompanying schedules or statements, has been examined by me, and is, to the best of my knowledge and belief, a true and complete return, made in good faith, for the period stated, pursuant to Local Law No. 9 of 1937, as amended, and the rules issued under authority thereof.

Sworn to and subscribed before me this 26th day of June 1940

Carter & Woolsey Shipbuilding Co.

Name of Business or Individual

By J. T. Arnold Treas.

Signature of officer, member, etc.

My commission expires March 30, 1941

Title

This space is for Departmental use only

C.B. 8 Folio 236

MAKE CHECKS PAYABLE TO CITY COLLECTOR

Cashier's Stamp

Corporation checked by _____ Date _____

Return mailed to _____

JUN 28 39 E90670 RECORDED Cash ——— ———0000000125

164

Tax Return for the Year 1937.
(Reverse Side)

Form 38B. Page 2

SCHEDULE A
DETAILS OF ITEM 12, PAGE 1, OF RETURN

EXPLANATION	Amount
	$

SCHEDULE B

ENTER HEREINBELOW ALL GROSS RECEIPTS NOT INCLUDED ON PAGE 1, OF RETURN

Nature of Receipt	Reason for Exclusion from Gross Receipts	Amount
The entire business consists of loading and unloading interstate commerce, and under the decision of the United States Supreme Court in the case of Puget Sound S. S. Co. V. Tax Commission of the State of Washington, et al., 58 Supreme Court Reporter, p. 72, the United States Court has held that such receipts are not subject to local tax, being income derived from foreign trade.		$

ANSWER ALL OF THE FOLLOWING QUESTIONS

The books of the taxpayer are in care of C. L. Smith, Treasurer

Located at 2-8 Broadway, New York City.

Was a return filed under Local Law No. 29 of 1936? YES

If so, under what name and address was the previous return filed? Under same name and address

Is this business in any way an outgrowth, result, continuation or reorganization of a business or businesses in existence prior to the date shown on Page 1? If answer is "yes" give name and address of such predecessor business and the date of the change in entity.

Was the present business discontinued prior to June 30th, 1938?

If so, state date operations ceased

Was the business legally dissolved? Date

Remarks

LOCATION OF BOROUGH OFFICES OF THE BUREAU OF CITY COLLECTIONS

BOROUGH	ADDRESS
MANHATTAN	ROOM 160, MUNICIPAL BUILDING
THE BRONX	TREMONT AVE. AND ARTHUR AVENUES
BROOKLYN	ROOM 1, MUNICIPAL BUILDING
QUEENS	COURT SQUARE, LONG ISLAND CITY
RICHMOND	ROOM 12, BOROUGH HALL, ST. GEORGE, S. I.

[fol. 27] TAX RETURNS FOR YEARS 1938, 1939 AND 1940 (REFERRED TO IN FOREGOING RETURN)

Omitted by Stipulation, see page 109.

COMPTROLLER'S NOTICE OF DEFICIENCY TAX ASSESSMENT WITH SCHEDULES (REFERRED TO IN FOREGOING RETURN)

Hearing Unit, Room 512.

Notice of Determination

A-21 7/42

Carter & Weeks Stevedoring Co., A-11-13 Produce Exchange, New York City.

Application Letter No. 6769

Date Aug. 14, 1942.

In Re: Business Tax Audit No. FB-14602. Reg. No. M-133438. Name —. Address —.

GENTLEMEN:

The Comptroller of the City of New York pursuant to Chapter 41 of the Administrative Code hereby gives notice of a determination of a Business Tax Deficiency together with penalties and/or interest to date amounting to $1,828.97 for the period from 1/1/37 to 12/31/40 as set forth below.

[fol. 28]

Summary of Deficiency

Period	Tax	Penalty Interest	Total
L. L. #22 of 1937	410 49	98 52	509 01
20 of 1938	359 50	64 71	424 21
103 of 1939	362 12	43 4	
78 of 1940	46		
Totals Due	1594 54	234 43	1828 97

Additional interest accrues at the rate of 1% per month in accordance with the provisions of said chapter unless payment is received within ten (10) days. Please enclose a copy of this notice in order to obtain proper credit for payment when making your remittance to the City Collector.

In the event that you do not agree with this determination, the law provides that an application in writing for a hearing must be made to the Comptroller within thirty (30) days of the date of this notice. Otherwise, this termination shall finally and irrevocably fix the tax.

Very truly yours, George Marlin, Special Deputy Comptroller.

VFK. MB 8/11/42.

[fol. 29]

A-502a 1/40

EXHIBIT "A"

The City of New York

EMERGENCY REVENUE DIVISION

50 Lafayette Street
New York, New York

Business Tax Summary Deficiency Statement

Page No. .....
Audit No. FB-14602
Reg. No. M-133438
Code No. 1970
Pay. No. 5RA
Date Aug 14 1942

Carter & Weeks Stevedoring Co.
Taxpayer

A-11-13 Produce Exchange, New York City
Address

Explanation	L. L. 22 of 1937 Period Ending 12/31/37	L. L. 20 of 1938 Period Ending 12/31/38	L. L. 103 of 1939 Period Ending 12/31/39	L. L. 78 of 1940 Period Ending 12/31/40
	Total Adjusted Taxable Receipts			
Additional Receipts Services Rendered.....	410,486.04	359,498.18	362,120.90	462,432.98
Total Additional Taxable Receipts.....	410,486.04	359,498.18	362,120.90	462,432.98
Net Taxable Receipts Reported.....	1,250.00	1,543.77	1,254.79	1,346.63
Total Adjusted Taxable Receipts.....	411,736.04	361,041.95	363,375.69	463,779.61
Tax @ 1/10 of 1%.....	411.74	361.04	363.37	463.78
Total Tax Due City of New York.....	411.74	361.04	363 37	463.78
Less Tax Paid City of New York.....	12.25	1.54	1.25	1.35
Balance of Tax Unpaid..	410.49	359.50	362.12	462.43
Penalties and/or Interest to Date.....	98.52	64.71	43.45	27.75
Tax Deficiency.....	$509.01	$424.21	$405.57	$490.18

Total Tax Deficiency $1,828.97. Make Checks Payable to City Collector.

[fol. 30] LETTER FROM PETITIONER TO RESPONDENT COMPTROLLER DENYING LIABILITY FOR ADDITIONAL TAXES SET FORTH IN DEFICIENCY ASSESSMENT AND REQUESTING HEARING THEREON (REFERRED TO IN FOREGOING RETURN)

Telephone BOwling Green 9-2880-2881.
Cable Address "Carterweek".

Members: New York Produce Exchange, New York Maritime Exchange.

Carter & Weekes Stevedoring Co., A 11-13 Produce Exchange, New York

August 19, 1942.

Mr. George Marlin, Special Deputy Comptroller, Bureau of Excise Taxes, 350 Broadway, New York, New York.

Attention Hearing Unit, Room 512, Notice of Determination. A-21.7/42

DEAR SIR:

Receipt is acknowledged of Business Tax Deficiency Notice, dated August 14, 1942 addressed to this company in the sum of $1,828.97 for the period January 1, 1937 to December 30, 1940. In accordance with the privilege ex-
[fol. 31] tended to taxpayers, a hearing is requested, regarding this assessment, to which exception is taken by the taxpayer. If convenient to your office, kindly arrange a date after September 10th, 1942.

Very truly yours, Carter & Weekes Stevedoring Co.,
by C. L. Smith, Treasurer.

CLS/ha.

FINAL DETERMINATION OF COMPTROLLER (REFERRED TO IN FOREGOING RETURN)

(Printed herein at page 16 as part of the Petition.)

[fol. 32] CERTIFICATION THAT PETITIONER HAS MADE DEPOSIT PURSUANT TO ADMINISTRATIVE CODE (REFERRED TO IN FOREGOING RETURN)

The City of New York

Intradepartmental Memorandum

To: Mr. George Marlin, Special Deputy Comptroller.
From: Mr. John W. Allen, Assistant Deputy City Collector.
Division of Special Taxes.
Date: February 25, 1944.
Subject: Carter & Weekes Stevedoring Co.
A 11-13 Produce Exchange, New York City.

This is to inform you that the Carter & Weekes Stevedoring Co. deposited with the Treasurer the sum of $2,352.75 on February 24, 1944; this payment was recorded in Cash Book 13, Folio 266, and has been credited to the escrow account—SMS-72.

This deposit was made pursuant to the provisions of the Administrative Code of the City of New York in order that review of determination by the Comptroller with respect to the Business Tax deficiency for the period January 1, 1937 to December 31, 1940 may be instituted.

A copy of the letter filed by Carter & Weekes Stevedoring Co. at the time o making said deposit is attached hereto for your information.

John W. Allen, Assistant Deputy City Collector.

JWA:ME, Att.

[fol. 33] Copy

Carter & Weekes Stevedoring Co.

A 11-13 Produce Exchange

New York

February 24, 1944.

City Treasurer of the City of New York, Municipal Building, New York City.

In Re: Comptroller's Determination of Carter & Weekes Stevedoring Company Business Tax, Interest and Penalties for the Years 1937, 1938, 1939 and 1940

Dear Sirs:

There is enclosed herewith our certified check in the amount of $2,352.75, which is paid to you as a deposit only, and not as a tax, pursuant to final and irrevocable determination of the Comptroller of the City of New York dated February 10th, 1944, with respect to business tax deficiency of the undersigned with interest and penalties for the years 1937, 1938, 1939 and 1940.

This deposit is made pursuant to the provisions of the Administrative Code of the City of New York in order that review of said determination of the Comptroller can be obtained by us in a court of competent jurisdiction under Article 78 of the Civil Practice Act.

Such determination of the Comptroller was made after hearings conducted by him at which it was shown by testi- [fol. 34] mony and other evidence that the gross receipts upon which such tax was levied were derived from foreign and interstate commerce and are not subject to such local taxation. The levying of such tax, interest and penalties, and such determination of the Comptroller thereon, is in violation of rights assured to us under Article I, Section 8, Clause 3, of the United States Constitution, and other provisions of the United States Constitution, and this deposit is made under protest as being required in violation of such rights.

It is understood by us that if after such court review it is finally found that the determination of the Comptroller, above mentioned, was erroneously, illegally or improperly made, that this deposit shall be returned to us.

Very truly yours, Carter & Weekes Stevedoring Co.,
(Signed) by C. E. Dougherty, President.

[fol. 35] Office of the Comptroller,

Bureau of Excise Taxes

June 4, 1943 Room 517 2 P. M.

In the Matter of CARTER & WEEKES STEVEDORING Co., A-11-13 Produce Exchange, New York, N. Y. (M-133438), Business Tax Deficiency.

Minutes of Hearing of June 4, 1943

Before Solomon Wittenberg, Presiding Officer

For the Comptroller: Jacob Slove, Esq., Assistant Corporation Counsel.

For the Taxpayer: Attorney: Edwin V. Hellawell, Esq., 70 Pine Street, New York, N. Y.

Witness: Charles E. Dougherty, Andover, N. J.

Mr. Wittenberg: This is a formal hearing in connection with a determination by the Comptroller of the City of New York against the Carter & Weekes Stevedoring Company, A-11-13 Produce Exchange, New York City, assessing a [fol. 36] Business Tax covering the period January 1, 1937 to December 31, 1940, in the total sum of $1,828.97, of which $1,594.54 is principal and $234.43 is the interest penalty.

Mr. Hellawell, are you ready to proceed with the hearing?

Mr. Hellawell: Yes.

Mr. Wittenberg: Will you please make an opening statement?

OPENING STATEMENT

Mr. Hellawell: I represent the taxpayer, Carter & Weekes Stevedoring Company, a West Virginia corporation which is engaged in the stevedoring business in the City of New York.

The entire business of this taxpayer other than incidental income is derived from stevedoring services on vessels in foreign, for the most part, and to a lesser part in interstate commerce. The taxpayer in making its returns for each of the years in question, namely 1937, 1938, 1939 and 1940, stated on the returns "the United States Supreme Court has held that such receipts are not subject to local tax". The returns were received by the Comptroller of the City of New York without protest and the taxpayer in each year

in question paid a tax on all of the receipts from its business other than that derived from foreign or interstate trade, which consisted for the most part or almost wholly of interest on bank deposits or from dividends on stock of corporations. Such returns were received without protest and the tax accepted by the Comptroller of the City of New York until during the month of July 1942, specifically, on July 13, 1942, a ruling was made by Mr. George Marlin, Special Deputy Comptroller of the City of New York, reading as [fol. 37] follows "General Business"—heading—"General Business and Financial Tax—Receipts from Stevedoring Operations carried on entirely within the Territorial Limits of the City of New York are to be Included in the Measure of the Tax. Based upon recent United States Supreme Court decisions subsequent to the *Puget Sound* case, the receipts from stevedoring operations carried on entirely within the territorial limits of the City of New York are to be included in the measure of the tax under the General Business and Financial Tax Law. No apportionment is necessary since the measure of the tax is restricted to receipts from activities carried on exclusively within the City of New York. Dated: July 13, 1942. George Marlin, Special Deputy Comptroller". That subsequently and for the first time the taxpayer received a notice of assessment of a tax which was based on receipts from stevedoring performed on vessels in foreign and interstate commerce, and this assessment was received on or about the 14th day of August, 1942.

Mr. Stove: The original assessment, of course, was mailed to the taxpayer and should be available to you.

The assessment as such is automatically a part of the record in this case. However, if for convenience you would like the Comptroller to prepare and produce a copy of the assessment I don't see why—any reason why that can't be done.

I have before me the body of the assessment, that is, the second sheet which gives the detail for the business Tax [fol. 38] Summary Deficiency assessment, which is a copy in the Comptroller's file; the top sheet which is the notice of deficiency determination seems to be missing from the file at this time and if it can be found it will be produced at a subsequent time or a copy substituted.

Mr. Hellawell: I ask that this paper, then, produced by the Comptroller be marked in evidence and a copy of it substituted for this exhibit.

Mr. Slove: No objection.

Mr. Wittenberg: (To stenographer) Mark this Taxpayer's Exhibit 1.

(Received and marked Taxpayer's Exhibit #1 in evidence.)

Mr. Slove: You do concede, Mr. Hellawell, that the taxpayer did receive the notice of deficiency determination in this case.

Mr. Hellawell: We concede that the taxpayer received the original of Exhibit 1.

Mr. Slove: Of Taxpayer's Exhibit 1.

Mr. Hellawell: That's right.

I wish to offer in evidence the return of the taxpayer for the year 1937 which shows a tax liability of $1.25 for receipts exclusive of receipts in the stevedoring business, all of which receipts constituted either foreign or interstate commerce.

Mr. Slove: This again is a document that is automatically a part of the record in this case. However, if you wish that it be marked and identified as an exhibit I have no objection.

Mr. Hellawell: Yes.

Mr. Slove: The Comptroller produces from his file the original return filed by the taxpayer.

[fol. 39] I have no objection to this being marked as an exhibit.

Mr. Wittenberg: (To stenographer) Please mark this Taxpayer's Exhibit Number 2.

(Received and marked Taxpayer's Exhibit #2 in evidence.)

Mr. Hellawell: And with reference to Exhibit Number 2 it is conceded, is it not, Mr. Wittenberg and Mr. Slove, that the $1.25 shown on the face of the return was paid to the City of New York.

Mr. Slove: It appears that the $1.25 was received by the City of New York.

Mr. Hellawell: The next one is 1938. I'd like to have you produce from your files the 1938 return of the taxpayer.

Mr. Slove: You are offering it as an exhibit?

Mr. Hellawell: I am offering it as an exhibit.

Mr. Slove: I have no objection to the taxpayer's return for the year 1938, now in the Comptroller's file, being marked as an exhibit.

Mr. Wittenberg: (To stenographer) Mark this Exhibit 3.

(Received and marked Taxpayer's Exhibit #3 in evidence.)

Mr. Hellawell: And will the same concession be made as to the payment of the $1.54 appearing on the face of the return as a tax liability?

Mr. Slove: Taxpayer's Exhibit 3 seems to bear a notation that the sum of $1.54 was received by the City of New York.

Mr. Hellawell: I ask the City to produce the taxpayer's return for the calendar year 1939, and I offer that in evidence as Exhibit Number 4.

[fol. 40] Mr. Slove: I have no objection to the receipt in evidence of taxpayer's return for the calendar year 1939, now a part of the Comptroller's file.

Mr. Wittenberg: (To stenographer) Mark this as Taxpayer's Exhibit Number 4.

(Received and marked Taxpayer's Exhibit #4 in evidence.)

Mr. Hellawell: I understand the same concession is being made as to the tax in connection with the year 1939, that is, that the $1.25 which is the tax liability shown on the face of the return was paid to the City of New York.

Mr. Slove: It appears on Taxpayer's Exhibit Number 4 in evidence that the sum of $1.25 was received by the City of New York.

Mr. Hellawell: Now I ask the City to produce taxpayer's return for the year 1940.

Mr. Wittenberg: It appears that our auditor had checked on the figure of that return and satisfied himself that the return was filed and a payment made of $1.35.

Mr. Hellawell: You don't have the return in the file?

Mr. Wittenberg: The return is not as yet in the file.

Mr. Hellawell: I ask that this be marked in evidence as a copy of the return for 1940.

Mr. Slove: On your statement, Mr. Hellawell, that this is an exact copy of the return that was filed with the City of

New York for the calendar year 1940 I have no formal objection to the introduction of this paper in evidence.

Mr. Hellawell: It appears in the taxpayer's file as having been an exact copy of the return as filed with the City of New York.

[fol. 41] Mr. Wittenberg: (To stenographer) Will you mark this Taxpayer's Exhibit Number 5.

(Received and marked Taxpayer's Exhibit # 5 in evidence.)

Mr. Hellawell: I ask that the witness be sworn.

CHARLES E. DOUGHERTY, residing at Andover, New Jersey, produced as a witness on behalf of the taxpayer, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hellawell:

Q. Mr. Dougherty, are you president of the Carter & Weekes Stevedoring Company?

A. Yes.

Q. Have you had prepared under your supervision a statement of the manner in which the stevedoring business is conducted by Carter & Weekes Stevedoring Company?

A. I have.

Q. And I show you this statement and ask you whether that is the statement prepared under your supervision?

A. That is.

(Discussion off the record.)

Q. Mr. Dougherty, will you describe in general the stevedoring business as it is conducted and has been conducted by Carter & Weekes during the years 1936 to 1940 inclusive, your method of operations, the percentage of your work of stevedoring which is devoted to foreign commerce—that is, vessels loaded or discharged which are engaged in foreign [fol. 42] commerce—and the percentage of vessels which are loaded and discharged by Carter & Weekes Stevedoring Company as stevedores which were engaged in interstate commerce during those years, and your connection with the business of stevedoring and with the business of Carter & Weekes Stevedoring Company in particular.

A. I am the president of Carter & Weekes Stevedoring Company, a West Virginia corporation, which is authorized to conduct business in New York State and which has its principal office in the Produce Exchange Annex, Borough of Manhattan, New York City. I have been connected with Carter & Weekes Stevedoring Company for thirty-six years. During that time I have served in the following capacities with that company: clerk, timekeeper, superintendent, secretary and president. For fifteen years I was directly in charge of actual stevedoring operations for our company as superintendent, directing the loading and discharge of vessels. During the last war I was assistant chief stevedore in the Port of Bordeaux with the rank of Captain of Engineers in the United States Army. Among my duties with Carter & Weekes Stevedoring Company for the past twenty years has been the geenral supervision of stevedoring operations which are conducted by employees of our company under the direct supervision of superintendents in our employ who are in charge of each ship. The business of stevedoring conducted by Carter & Weekes Stevedoring Company during the years 1937 to 1940 and in prior years and at present, consists of the following: In loading a ship we first obtain a plan of the vessel showing her length, beam [fol. 43] and draft, her dead weight gross and net tonnage. We also ascertain from this plan the number, location and dimensions of each cargo hold and other cargo spaces such as 'tween deck space, deep tanks and other portions of the vessel in which cargo can be stowed. We also ascertain the location of each hatch, the capacity of the ship's winches and booms and slings, and the location of bulkheads and stanchions in each cargo space, the location of fuel and water tanks, and of portions of the ship set aside for carriage of ships stores. The location and capacity of water and fuel tanks and place for stowage of ships stores is a factor in our business, since fuel, water and stores are consumed on the voyage and the depletion of these stores have an effect on the trim of the vessel. We next ascertain the nature of the cargo to be stowed in the vessel, and if the vessel is to stop at more than one port of call, the cargo which is destined to each port. This is necessary in order that cargoes destined to first and successive ports of call will be available for discharge without disturbing cargo which is destined to a succeeding port of call. We then ascertain the amount of weight by volume of each particular

class of cargo, since it is important that, where possible, heavy cargo be stowed as low in the ship as possible. We must also carefully consider the nature of the cargo as to whether or not it is breakable or otherwise perishable, and other characteristics which would prevent its stowage, for instance, near boilers or under other cargo, etc. We must, in stowage of cargo, follow the rules of the Board of [fol. 44] Underwriters. It is important that the weight be so distributed through the vessel that her trim will be such that she is not only seaworthy at the outset of the voyage, but will remain so after cargo is discharged at her several ports of call and as stores, fuel and water are used. After we have ascertained and considered these and other factors, a stowage plan is prepared and submitted to the ship's master for his approval, and the vessel is made ready to receive her cargo. This tentative stowage plan details where each of the classes of cargo to be loaded into the vessel, shall be stowed. In order to conduct stevedoring operations, we have in our employ, in addition to executives, the following: superintendent in charge of each ship, foremen, hatch tenders, longshoremen, timekeepers, carpenters, engineers or winchmen. When we start our stowage operations the cargo has already been delivered by others and has been placed by them on the dock of the steamship company as near as convenient to the side of the ship. Vessels to be loaded are equipped with booms which are long and heavy poles either of wood or metal and which are attached to their lower end to the mast by a hinge or swivel. Usually there are four of such booms attached to both forward and after masts. To the upper end of these booms steel cables are attached which run through heavy steel blocks and on to the drums of winches which are operated or worked by an engine through steam supplied by a boiler aboard the ship, and an engineer or winchman in our employ is in charge of each of these winches. What is known as a "draft," or a [fol. 45] large collection of cargo, is made up on the dock within the scope or reach of the ship's boom. In some classes of cargo, this is collected together in what is known as a "cargo net" made of either manila or steel wire rope, and in other cases wire rope slings are used. In either case, the vessel's booms are spotted, one over the pile of cargo on the dock, and one over the ship's hatch leading to the part of the ship to be loaded, connected by two falls married with one hook. A hook attached to a heavy block and

fall is attached to the cargo net, or the straps, and on a signal from the gangway man or hatch tender, the winchmen in charge of the winches raise the draft so that it is to a point on the dock above the side of the vessel and is then swung until it hangs over the hatch leading to a cargo hold of the ship. On a further signal from the hatch tender, the winchmen lower the draft into the hold of the ship. Longshoremen in our employ make up the draft on the dock and other longshoremen in our employ located in the hold of the ship unhook the cargo net or sling when the draft has reached the hold which has been predetermined as its place of carriage. The longshoremen in our employ, in the hold of the vessel, then stow the cargo in the hold under the direction of another foreman in a manner so that such cargo will not shift during the voyage. The entire ship is thus loaded in accordance with the stowage plan. In some cases it is necessary, where large pieces of cargo are to be loaded, to use the services of carpenters in our employ to build bulkheads or to brace and truss heavy [fol. 46] pieces of cargo with wooden beams or other lumber. Most of our services are performed in the hold and on other portions of the vessel itself. The entire balance of our services are performed on the dock at a point as convenient as possible to the side of the vessel. The vessel must be loaded in such a manner that her trim or stability is maintained at all times. There is only one other function of the business of stevedoring as we conduct it. That is the discharge or unloading of a vessel. This operation is the exact reverse of the loading operation previously described. In the operation of discharge, the cargo is removed from the holds of the vessel by the vessel's slings attached to its booms and deposited at a convenient point on the dock where it can be removed by others. Ninety-five per cent. of the vessels that were loaded and discharged by our company during the years 1936 to 1940, inclusive, were destined to or arrived from foreign countries. All of the stevedoring services performed on such vessels constituted foreign commerce. The balance of the vessels loaded or discharged by us during the years 1936 to 1940, inclusive, were engaged in interstate trade and our work thereon was interstate commerce. None of the ships upon which stevedoring services were performed by us during said years were engaged in intra-state trade. In doing this work we contract with steamship companies to load and discharge

vessels in their ownership, and this work is completely done by our employees whom we control and direct to work ourselves through supervisory employees. All of the ves-
[fol. 47] sels as to which our work is done are engaged exclusively in interstate or foreign commerce. Any serious interruption in the service we perform impairs the activity of a port or would slow down and obstruct the free and steady flow of commerce. It is necessary that our work be done expeditiously so that the facilities for such interstate and foreign commerce and the ships engaged in such commerce can be operated at a maximum of efficiency. We at all times during the years 1936 to 1940 had an adequate and competent force of highly skilled men and equipment to do this work so that the loading and discharging of vessels was not delayed. The cost of our work is absorbed by the vessel and is covered by the freight bill of the carrier, and our billings for services are always made to the steamship owner. Our services never commence any place other than at a convenient point near the side of a vessel and end in the hold of the vessel in loading a vessel, and in discharging a vessel our services commence in the hold and end at a convenient point alongside of the vessel on the dock. All of our stevedoring contracts are uniform in that they include the complete loading or discharging of a vessel in the manner herein referred to. Stevedoring services are highly specialized, and call for the exercise of skill and knowledge of many factors which seriously affect the seaworthiness of the ship as loaded and the general safety of the conduct of the voyage.

Q. Mr. Dougherty, I show you a paper and ask you what that is.

[fol. 48] A. That is one of our contracts with one of the principal steamship agencies in the Port of New York.

Q. For the performance of stevedoring services?

A. For the performance of stevedoring services.

Mr. Hellawell: I offer that in evidence.

(Discussion off the record.)

By Mr. Hellawell:

Q. I note that this paper is dated 1934. Did this contract or the agreement thereunder carry on during the taxable period, during the years 1936 to 1940 inclusive, and it is still in full force and effect?

A. Yes.

By Mr. Slove:

Q. Is this contract with someone that your company did business with during this taxable period?

A. Tha was our principal customer.

Q. And you received receipts from stevedoring during this taxable period as a result—pursuant to this contract?

A. That's right.

Q. Such receipts as are involved in this hearing?

A. True.

Mr. Slove: I have no objection.

Mr. Wittenberg: (To stenographer) Please mark this Taxpayer's Exhibit Number 6.

(Received and marked Taxpayer's Exhibit #6 in evidence.)

By Mr. Hellawell:

Q. Is that a fairly representative specimen of a contract usually employed by you in connection with stevedoring operation?

A. Yes.

[fol. 49] Q. With the steamship companies?

A. Yes.

Q. Mr. Dougherty, you've spoken of the loading and discharge of vessels of cargo either from alongside the steamer on the dock or to alongside the steamer onto the dock. Are the vessels also sometimes loaded from a lighter alongside the vessel?

A. Yes, at times they load it from lighters to the ship or vice versa.

Q. That would be exclusively the way your operations were carried on, that is, either from a dock alongside of the vessel or from the lighter alongside of the vessel?

A. That's right.

Cross-examination.

By Mr. Slove:

Q. Mr. Dougherty, how long were you president of this company?

A. Since some time in January.

Q. Of this year?

A. Of this year.

Q. What capacity did you have with this company prior to that?

A. From 1922 until the first of this year the secretary of the company; previous to that superintendent, timekeeper, and so forth.

Q. Are you familiar with the returns that were filed by this company with the City?

A. Yes.

Q. Excise Tax returns?

A. Yes.

Q. Now, for the years 1934—for the calendar years 1934, 1935, and 1936 the taxpayer reported in its returns three categories of receipts from stevedoring described as gross income from bills rendered for discharging and loading vessels, gross income from lighterage bills, and gross income from coaling bills. Are you familiar with that breakup?

[fol. 50] Mr. Hellawell: I object to that as not being within the issues, Mr. Slove, because that's outside of the years in question.

Mr. Slove: Suppose we let it go in subject to connection. You can move to strike it out later.

Mr. Hellawell: Yes.

By Mr. Slove:

Q. Will you answer the question.

A. Yes, most of our business came from direct loading and discharging of vessels. The lighterage charges were comparatively small and also those for coaling vessels.

Q. You did have those three sources of income, however?

A. That's right.

Q. Did you have those same three sources of income in the years from 1937 to 1940?

A. We did from stevedoring and lightering but whether we had coal in all of those years I couldn't say with certainty.

Q. You certainly had lightering?

A. We certainly had lightering but the coaling is something that you don't have much of any more.

Q. And did you pay any Excise Tax to the City of New York—when I say "you" I mean the company—by reason of receipts from lighterage bills or coaling bills for the years 1937, 1938, 1939, and 1940?

Mr. Hellawell: Well, I object to it as not being the best evidence. The face of the return shows in the year 1937, I [fol. 51] believe, that there is a coaling and lighterage charge.

(Discussion off the record.)

Mr. Hellawell: I will withdraw that objection.

By Mr. Slove:

Q. Will you answer the question.

A. (No answer.)

(Next to last question read back by stenographer.)

A. No.

Q. Now, Mr. Dougherty, will you please define what you mean by stevedoring.

A. Stevedoring is a contract with a steamship company for the physical work of taking the cargo from a dock and placing it aboard the vessel and properly stowing it in the vessel or taking the cargo from the vessel to a dock and properly stowing it on the dock, or you may take your freight from a lighter in lieu of a dock or put your freight on a lighter and discharge it to a lighter.

Q. A lighter would be defined as a vessel of some kind?

A. Yes, that's a small, usually flat, deck boat with a capacity maybe of two to four hundred tons.

Q. Now, the work that your company did was, for the greatest part, of the first category that you just described?

A. Yes.

Q. So that, to put it simply, when a vessel docked at the City of New York—withdraw that.

[fol. 52] Q. To put it in another way, when a steamship company is anchored at a dock ready to take a cargo it is your business to provide men who will physically take the cargo from a land point and load it onto the vessel or vice versa, taking it off of the vessel anchored at the dock and physically remove it to a land point, is that correct?

A. When you say a land point I think technically a dock is considered to be more or less——

Q. Well, without deciding what a dock is.

A. Well, we might just as well answer the question fully and I say that a dock is a place outside of the customs

limits of the Port of New York and there is where we take it from and put it.

Mr. Slove: I will ask that the last part of the answer be stricken out as not responsive

Mr. Wittenberg: Strike that.

Mr. Hellawell: Well, I submit that it is entirely responsive.

Mr. Slove: I didn't ask him what a dock was.

Mr. Hellawell: But you are saying a land point.

Mr. Slove: Yes. If he doesn't understand the question——

Mr. Hellawell: A specific land point, if you are more specific and say a dock alongside of a vessel.

(Discussion off the record.)

(Last two questions and answers read back by stenographer.)

[fol. 53] By Mr. Slove:

Q. When a steamship company has a vessel moored at a pier ready to take a cargo aboard it is then your company's business to provide men to physically transfer cargo from a land point near the pier onto that vessel and vice versa?

Mr. Hellawell: I object to the characterization of the business in so far as providing men is concerned. It isn't a question of providing men; it is conducting the operation through their employees.

Mr. Slove: I submit that it is a question—whether they provide men or not it is a matter of fact; it is a question that he can answer yes or no.

Mr. Hellawell: One thing is providing men and one thing is conducting an operation. It is quite a different thing. It is a misleading question. Providing men is quite different from conducting an operation through employees.

Mr. Slove: I'll let Mr. Wittenberg rule on it.

Mr. Wittenberg: I believe you should state that the operation is carried through by employees of the taxpayer.

Mr. Hellawell: By the taxpayer through its employees which is the proper thing.

(Discussion off the record.)

By Mr. Slove:

Q. What I am getting at Mr. Dougherty is it is the work of your company through its employees to provide the [fol. 54] man power to do this physical work of transferring the cargo onto the vessel, is that right?

(Discussion off the record.)

A. Well, I will say that the cargo is transferred to the vessel by means of a fall which is suspended over the cargo on the dock and then taken in slings aboard the vessel where it is stowed by our employees.

Q. Now, that work is done by men employed by your company, is that right?

A. True.

Q. Now, before your men, your employees, get to the point where this work is to be done where is the cargo physically located?

A. As nearly as possible to the side of the vessel where it can be easily slung and taken aboard.

Q. Would that be on the sidewalk somewhere along the water front?

A. No.

Q. Might it be there?

A. No, it would be on the dock.

Q. It would always be on the dock?

A. Always on the dock.

Q. A dock being what?

A. A dock is a shed over the water and always below the high water mark of the Port of New York.

Q. Would you say a dock is a floating pier?

A. No, it's secured by piling in the water; supported by piling in the water.

Q. It's something that's physically attached to the land nearest to the water where the vessel is moored, isn't that so?

A. Yes.

Q. Now, the cargo is on the pier or, rather, on the dock, then, when your men—your employees—get there to do this work?

A. That's right.

[fol. 55] Q. Your men have nothing to do with getting it to that point, do they?

A. No.

Q. Now, the men that do this work, are they regular employees of yours?

A. No, they're transients; they're classified much the same as seamen would be on the vessel.

Q. Well, they are employees of your company.

A. On an hourly basis; they may be hired or fired at our pleasure.

Q. They are employees in the sense that they are people that are on your pay roll.

A. Oh, yes.

Q. They are hired by you.

A. True, much the same as a ship hires its seamen.

Q. Yes. You may hire a man and he may be with your company for many years.

A. No, because these men are transients and they work for all contractors.

Q. You wouldn't refuse to hire a man because he wanted to work for you for a long time, would you?

A. We hire him when he is available.

Q. And if he is available you might use the same man for an extended period of time?

A. Well, it is unlikely because these men go from one contractor to another.

Q. If you have plenty of work for men then you have the men around all the time, haven't you?

A. Not the same men.

Q. Well, now, let's get down to cases. During this taxable period can you tell us who some of the men were that did work such as you have described for you?

A. That would be an impossible job because they——

Q. Would your records show it?

A. The records would show it and I think the records of [fol. 56] the New York Shipping Association which controls it—they keep all the records of the earnings of the men and so forth—would show that the average—would show that the average longshoreman doesn't work for the same stevedore half of the week, he continually drifts.

Q. Let's confine ourselves to the question that I am asking. I wanted to know specifically whether you could tell me who some of the men were that did the type of work that you have described in this taxable period.

A. Well, I can only say that they're regular members of the International Longshoremen's Association.

Q. Do you know any of them?

A. Surely.

Q. Can you name some of them?

A. Surely.

Q. Name some of the men that did work for you of the type that you have described in the taxable period for any extended period of time.

A. I'd have to go into my records to get the specific men.

Q. You can't do that without referring to the records?

A. No.

Q. You don't know any of them that well?

A. We may within a year, in fact, we have on our books the names of over six thousand men, which shows how transient they are.

Q. You keep pay roll records, don't you?

A. Sure.

Q. File unemployment insurance returns and social security returns with the New York State and Federal government?

A. Surely.

Q. And that's done quarterly, isn't it?

A. Yes.

Q. And when you file those quarterly returns you show the various men that worked for you in this type of work [fol. 57] during that particular quarter?

A. Yes.

Q. Now, do you know at this time whether names of some of these men appeared for more than one quarter?

A. Oh, yes, undoubtedly they would.

Q. Do you know whether the names of some of these men appeared for more than four quarters?

A. Probably yes.

Q. And were there some men that appeared for several years?

A. Well, I wouldn't know that. It's too transient to go into that phase.

Q. You wouldn't know that without referring to your records?

A. No.

Q. Now where is the office of Carter & Weekes Stevedoring Company?

A. 2 Broadway.

Q. That's the Produce Exchange Building?

A. That's right.

Q. That's the only office that the company has, isn't it?
A. That's right.
Q. Everything clears through that office?
A. Surely.
Q. All the business is carried on at that office?
A. Yes.
Q. Do your men report at that office at any time?
A. Only to receive their pay occasionally; usually they're paid at the docks.
Q. You have somebody that goes to the dock and pays them there often?
A. That's right.
Q. Now, did you say that most of the income from stevedoring such as you have described during the taxable period came as a result of your agreement with Norton, Lilly & Company as evidenced by this contract, Taxpayer's Exhibit 6 in evidence.

[fol. 58] Mr. Hellawell: I object to that question because that was not the question or answer. This is a specimen; it was stated this was a specimen contract with a large customer of Carter & Weekes.

By Mr. Slove:

Q. All right. I will change the question to ask you if a substantial part of your income from stevedoring such as you have described during this taxable period came as a result of this agreement, Taxpayer's Exhibit 6 in evidence?
A. Yes.
Q. Now, where is the office of Norton, Lilly & Company?
A. 26 Beaver Street.
Q. Do you know where this contract was signed?
A. Probably at 26 Beaver Street.
Q. Did your company have a bank account in New York?
A. Yes.
Q. What bank?
A. Chase National.
Q. Where is it located?
A. 25 Broadway.
Q. Is that the only place where you have a bank account?
A. That's all.
Q. What sort of a place do you have at 2 Broadway?
A. We just have our general offices there; we have three, four rooms.

Q. How many people are regularly employed at that office?

A. About twelve.

Q. Do you have your office there?

A. Yes.

Q. Did you always have your office there?

A. Always did.

Q. Are all of the other officers of the company located at that address?

A. Yes.

Q. Are all your bills made out at that office?

A. Yes.

[fol. 59] Q. And sent out from that office?

A. Yes.

Q. And all your collections effected from that office?

A. Yes.

Q. In other words, all your bookkeeping is carried on at that office?

A. Right.

Q. Now, when you bill a customer for the services performed by your company—withdraw that question.

Q. Will you produce a copy of a billing—sample billing—by your company for stevedoring services such as you have described during this taxable period?

A. I presume you want it during that period?

Q. Yes, I just said during the taxable period.

A. Yes.

Q. Now, when you have a job to do how are you advised of it?

A. Well, we usually are told by telephone to confer with one of the operating managers of a steamship company.

Q. Let's refer specifically to this customer, Norton, Lilly & Company. Suppose Norton, Lilly & Company had a job for you to do, how would they communicate that information to you?

A. Well, their operating manager would phone our superintendent to call and be given the instructions.

Q. Your superintendent being someone that's employed at your office at 2 Broadway?

A. Well, no, he's employed on the docks.

Q. Has he got an office somewhere?

A. On the dock.

Q. Where?

A. In the case of Norton, Lilly & Company at that time it was Pier 2, Bush Docks.

Q. Is that in Brooklyn?

A. That is in Brooklyn, foot of 49th Street.

[fol. 60] Q. He had an office there?

A. Yes.

Q. What was his name?

A. John R. Russell.

Q. And his full title?

A. At that time, superintendent.

Q. Just superintendent?

A. Now he is vice president of the company.

Q. At that time, do you mean from 1937 to 1940?

A. That's right.

Q. Throughout those years he was superintendent?

A. In charge of that business.

Q. In charge of the stevedoring business?

A. For Norton, Lilly & Company.

Q. He devoted his whole time to this one customer?

A. That's right.

Q. And he had a personal office, did he?

A. Yes, on the dock.

Q. At the point you just designated?

A. Yes.

Q. Did you have any other superintendents doing work similar to Mr. Russell for other customers?

A. Yes, we had Victor Palmer.

Q. He was also a superintendent?

A. Yes.

Q. Where was his office?

A. Pier foot of Milton Street, Greenpoint.

Q. Greenpoint, Brooklyn?

A. That's right.

Q. Now, did you have any other employees similar to Mr. Russell and Mr. Palmer?

A. No.

Q. Did Mr. Palmer handle any particular business?

A. Yes, he handled the A. L. Burbank & Company account.

Q. Is that all?

A. That's all.

Q. He devoted his full time to that customer?

A. That's right.

Q. How many customers did you have, approximately, during these years for whom you did work similar to what you have just described as stevedoring?

A. Well, they were the only large customers; then we had [fol. 61] some miscellaneous jobs, mostly small; couldn't give you that information without going through the bill books.

Q. Now, who handled the work for the smaller customers?

A. I did.

Q. And you handled it from your office at 2 Broadway?

A. That's right.

Q. What percentage of your income from stevedoring, approximately, resulted from Mr. Russell's activities, Mr. Palmer's activities, and your activities?

A. Well, between the three of us would be a hundred per cent.

Q. Break it down?

A. You mean proportionately?

Q. Yes.

A. Mr. Russell about fifty per cent., Mr. Palmer about twenty-five, the smaller accounts combined about twenty-five.

Q. What did the office of Mr. Russell consist of at Pier 2, Bush Docks, Brooklyn?

A. The steamship company assigned him an office there on the dock.

Q. I see. It was the office of the steamship company?

A. It was part of the space for which they paid rental.

Q. Your company didn't have to pay anything at all?

A. No.

Q. Did you have any employees of your company in addition to Mr. Russell there at that location?

A. No regular employees.

Q. Mr. Russell, however, was your employee?

A. That's right.

Q. He was paid a salary by Carter & Weekes.

A. Yes.

Q. Now, with respect to Mr. Palmer at the foot of Milton Street in Greenpoint, Brooklyn, what sort of an office did he [fol. 62] have at that point?

A. He had an office assigned also by the terminal people.

Q. Did your company pay anything to maintain that office?

A. No.

Q. Did you have any employees outside of Mr. Palmer there?

A. No regular employees.

Q. Did you have any part time employees?

A. No, only the longshoremen, of course, when a vessel was working.

Q. Did you have a telephone at either of these two offices?

A. Yes.

Q. Telephone that Carter & Weekes paid for?

A. That's right.

Q. At each office?

A. Yes.

Q. And Mr. Palmer was a regular employee of Carter & Weekes?

A. Yes.

Q. He was paid a regular salary by Carter & Weekes?

A. Yes.

Q. Now, I think I asked you before what was the practice when a customer, we'll take Norton, Lilly & Company for example, had a job for you to do, how did they communicate that. Will you repeat that again?

A. They would call either our office or the superintendent direct.

Q. They might call your office at 2 Broadway?

A. They might.

Q. Or they might call Mr. Russell direct at the pier?

A. At the pier and they would ask him to confer with their operating manager and arrange for the loading of the ship when the freight was delivered on the dock.

Q. In other words, they would tell either you or someone at your office at 2 Broadway, or Mr. Russell that they had a boat that was to be loaded.

A. That's right.

[fol. 62] Q. And they needed some of your employees to do the loading, is that right?

A. Yes.

Q. Now, what would you say was the—withdraw that.

Q. As between calling upon your company, your office at 2 Broadway directly and calling upon Mr. Russell to tell him about such a job, what would you say was the percentage?

A. Well, they would always call Mr. Russell first.

Q. Yes?

A. Unless the operating manager should be making a social call at the office, then he might tell us to have Mr. Russell call on him.

Q. Ordinarily they'd call Mr. Russell first?

A. Call Mr. Russell directly.

Q. When they called Mr. Russell he'd then call you?

A. Oh, no, he would report directly to them.

Q. What was the next step?

A. Then they would notify what foreign ports the vessel was going to, the order of those ports, and they'd——

Q. Just a moment, the case that we are going to take would be a case of a boat that had come in and had to be unloaded. Take such a case. Now, what would Mr. Russell do after the customer told him that the boat was moored at the pier ready to be unloaded?

A. Well, then they would supply him with a stowage plan of the vessel showing how the cargo was stowed in the ship, what foreign ports it came from, and whether it was to go to lighters or to the dock. Then he would go ahead with the job.

Q. This was done in every case?

A. Oh, yes, it must be done.

Q. They would always provide what you call a stowage plan?

A. True.

[fol. 64] Q. Do you keep those plans in your files?

A. I think we have some of them.

Q. Will you submit a typical one that was used in this taxable period for this customer?

A. Surely.

Q. Then Mr. Russell from that point how would he go about getting the men to do the job?

A. Well, usually the men what we call shape around the pier, you see.

Q. They what?

A. They shape at the pier; they call it shaping. They report at the head of the pier in order to be employed and then we take them in through the gate of the pier as they are employed, man for man, and the foreman picks them out.

Q. What foreman?

A. The foreman of the job would be directly under Mr. Russell.

Q. You mean a foreman employed by your company?

A. That's right.

Q. Well, do you have a foreman stationed at the pier at all times?

A. No, we employ him when required.

Q. The first thing you would do is to get a foreman, is that it?

A. True.

Q. Who does that?

A. Mr. Russell; whoever the superintendent is supplies the foreman.

Q. The superintendent ordinarily would employ a foreman?

A. That is right.

Q. Is that foreman any more steady an employee than the stevedores generally?

A. No.

Mr. Hellawell: Longshoremen generally.

Mr. Slove: Longshoremen generally.

A. (Continuing.) The only difference is we pay him a daily wage instead of an hourly wage.

[fol. 65] By Mr. Slove:

Q. Then you get a foreman and he in turn picks out the other men?

A. That's right.

Q. With final approval by the superintendent?

A. No, that's his job; if he doesn't do it right we'd get another foreman.

Q. It is up to the foreman to get as many men as he thinks are necessary?

A. No, the superintendent would specify the number of men but he would employ the type of men that he thinks are capable.

Q. You mean the foreman would.

A. The foreman would.

Q. And where do they report for work?

A. At the entrance to the pier.

Q. Pursuant to directions from the foreman?

A. That's right.

Q. And who supervises or keeps record of their time?

A. The timekeeper.

Q. Employed by you?
A. By us, yes.
Q. Now, how does the timekeeper get to the pier?
A. How does he get there?
Q. Is he always stationed there?
A. No, he is paid on a daily basis the same as the foreman.
Q. You get a timekeeper for the job just as you get a foreman for the job, is that the idea?
A. Yes.
Q. Timekeeper submits his reports to whom?
A. To the superintendent.
Q. And the superintendent passes it on to your office?
A. That's right.
Q. And the pay roll is prepared in your office?
A. No, on the dock.
Q. It is prepared on the dock?
A. Yes.
[fol. 66] Q. By the superintendent?
A. By the timekeeper.
Q. Well how is the pay roll actually prepared in the sense of where does the money come from to pay the men?
A. The money must come from our office.
Q. Is a check drawn at your office?
A. That's right.
Q. For the entire pay roll?
A. That's right.
Q. On a daily basis?
A. On a weekly basis.
Q. And how do you know how much of a check to draw?
A. Well, we prepare the pay roll about two or three days before pay day, which gives us ample time to check it.
Q. Who prepares it?
A. The timekeeper prepares it, then it is checked in our office.
Q. The pay roll is prepared and sent to your office at 2 Broadway where it is checked?
A. And then paid within a couple of days.
Q. And a draft is drawn in your office?
A. Yes.
Q. Cash is provided?
A. Yes.
Q. And sent over to the superintendent?
A. To the pier.

Q. How does it get there?

A. By armored truck.

Q. Individual envelopes are made out for the men?

A. That's right.

Q. All that is done in your office?

A. Yes. When I say in the office we usually do it in the bank, in the vaults of the bank.

Q. How do you determine the amount to charge your customer for the particular services that are rendered by the company?

A. Well, we charge him on the tonnage basis.

[fol. 67] Q. You have a schedule of charges incorporated in the contract with the customer?

A. That's right.

Q. And you make up your charges pursuant to that schedule?

A. True.

Q. Now, where are those bills or invoices prepared?

A. In our office,

Q. At 2 Broadway?

A. Yes.

Q. You will produce a sample billing at the next hearing?

A. Yes.

Q. Now, did you ever have occasion to go to any agency as a means of securing necessary men to do stevedoring work for you?

A. No.

Q. Such as an employment agency?

A. No.

Q. Or a union?

A. No.

Q. You always have men available at the docks whom you can pick up to do the work?

A. Yes.

Q. That's been the situation throughout these years involved?

A. True.

Mr. Slove: Well, I think that we can suspend at this point.

Mr. Wittenberg: Hearing adjourned to July 8, 1943 at 2 o'clock.

[fol. 68] Office of the Comptroller

Bureau of Excise Taxes

July 30, 1943 Room 515 2 P. M.

In the Matter of CARTER & WEEKES STEVEDORING Co., A-11-13 Produce Exchange, New York, N. Y. (M-133438.) Business Tax Deficiency

Minutes of Hearing of July 30, 1943

Before Solomon Wittenberg, Presiding Officer

For the Comptroller: Jacob Slove, Esq., Assistant Corporation Counsel.

For the Taxpayer: Attorney; Edwin V. Hellawell, Esq., 70 Pine Street, New York, N. Y.

Witness: Charles E. Dougherty (Recalled) Andover, N. Y.

Mr. Wittenberg: This is a continuation of a formal hearing last held on June 4, 1943 in connection with a determination by the Comptroller of the City of New York against the Carter & Weekes Stevedoring Company, [fol. 69] A-11-13 Produce Exchange, New York City, assessing a Business Tax covering the period January 1, 1937 to December 31, 1940, in the total sum of $1,828.97, of which $1,594.54 is principal and $234.43 is the interest penalty.

CHARLES E. DOUGHERTY was recalled as a witness for the taxpayer.

Mr. Hellawell: Pursuant to the request of the Corporation Counsel at the last hearing I am going to produce what is known as an outward stowage plan of the Steamship *City of Winchester*, February, 1939, which is a representative stowage plan. I offer that exhibit.

By Mr. Slove:

Q. Is that a plan that was submitted to you in connection with any work that you did during this taxable period, Mr. Dougherty?

A. Yes, we made this plan up.

Q. Yourself?

A. For the steamship company.

Q. At their request?

A. That is part of our duties as a service corporation.

Q. You get paid for it?

A. No—in connection with the operation.

Q. In order to be able to do the work you make up this plan?

A. Yes.

Q. You have somebody go aboard the steamer?

A. Continuously during the operation.

Q. Well, it's done in the beginning, isn't it, before you start the operation?

A. Well, it starts with the operation, continues through-
[fol. 70] out until its completion.

Q. What continues—the making of the plan?

A. The making of the plan while the ship is being loaded. The two are done simultaneously.

Q. How long does it take to make a plan like this?

A. A week or ten days.

Q. What is the purpose of making a plan?

A. So that when the ship is discharged at the other end the unloading stevedoring company will know how the cargo has been stowed and can intelligently discharge them.

Q. In other words, this is then a report of the work that is done by your employees?

A. Practically, yes.

Q. Now, you say this was in connection with work done for any particular customer of yours?

A. The Norton, Lilly & Company.

Mr. Slove: No objection.

Mr. Wittenberg: Mark this Taxpayer's Exhibit Number 7 in evidence.

(Received and marked Taxpayer's Exhibit 7 in evidence.)

Mr. Hellawell: Now, pursuant to the request of the City I produce an inward stowage plan; that is, on a vessel from a foreign port, coming in, arriving at New York, it being an inward stowage plan. *S. S. Kaikoura*, sailed November 8, 1939.

By Mr. Slove:

Q. Is this plan similarly made in connection with work that you did for one of your customers?

A. That would be a plan made by the stevedore in Aus-

[fol. 71] tralia for our use in discharging the vessel at New York.

Q. And that was submitted to you by your customer?

A. That's right.

Q. The same company?

A. The same company, Norton, Lilly & Company.

Q. By reference to this plan your employees are facilitated in doing their work of unloading the steamer, is that it?

A. That's right.

Mr. Slove: All right; no objection.

Mr. Wittenberg: Mark this Taxpayer's Exhibit Number 8.

(Received and marked Taxpayer's Exhibit Number 8.)

Mr. Hellawell: Pursuant to request of the City I produce a sample billing representing a billing on an outward cargo on the steamship *Piako*, dated December 9, 1939.

By Mr. Slove:

Q. This is a copy of an actual invoice that was rendered by Carter & Weekes to Messrs. Norton, Lilly & Company during this taxable period?

A. Yes.

Q. And this amount of $5,548.03, is that included in the receipts that were the basis of the assessment here in issue?

A. That's right.

Mr. Slove: No objection.

Mr. Wittenberg: Mark this Taxpayer's Exhibit 9.

(Received and marked Taxpayer's Exhibit 9 in evidence.)

[fol. 72] Mr. Hellawell: That's all.

Mr. Slove: Now, at this time I wish to refer to that portion of the testimony given by Mr. Dougherty at the last hearing which specifically—pages 15 and 16 thereof—characterizes the stevedoring services of the taxpayer as constituting foreign commerce, and I move that such characterization be stricken out as being improper in form and unresponsive to the question originally asked, and improper as calling for a legal conclusion. The same would apply to any reference to any portion of its business being interstate or intrastate commerce, those being questions of law to be determined in this hearing, among other things.

Mr. Hellawell: I object to the striking out of that testimony on the ground that by the testimony of Mr. Dougherty showing that he had thirty-six years of experience in the stevedoring business, that ninety-five per cent of that business constitutes foreign commerce, and that that is a conclusion of fact which he as an expert may draw as a result of his years of experience in the business. His testimony shows that ninety-five per cent of the vessels which were loaded or discharged by the company during the years in question here were destined to foreign countries or arriving from foreign countries, and that that is a fact, conclusion or opinion that he may freely draw as an expert.

[fol. 73] Mr. Slove: I have no objection to his saying that ninety-five per cent of the cargo was destined for foreign ports, but my objection is directed to his conclusion that that is foreign commerce, or at least this part of that transaction, the stevedoring which he has defined as loading of boats, constitutes foreign commerce. That is clearly, in my opinion, a question of law, and I therefore move to have it stricken out.

Mr. Hellawell: I maintain that the testimony as given should stand. The Court can, in a later review, if that is necessary, strike out that or disregard it if they feel it is a conclusion of law. I say it is a conclusion of fact.

(Discussion off the record.)

Mr. Wittenberg: It is ordered that the sentence on page 15: "All of the stevedoring services performed on such vessels constitute foreign commerce," shall be stricken out of the record, and it is ordered that the clause on page 16 which states: "and our work thereon was interstate commerce," shall be stricken off the record.

Mr. Hellawell: Objection and exception, and I ask that the minutes be transcribed—that it shall not be physically stricken from the record and it shall show the objection and the testimony as given.

Mr. Wittenberg: That is correct; the minutes will reflect the statements that are made at this hearing.

[fol. 74] Mr. Hellawell: All right.

I just want to call attention to one sentence, also at page 16, I believe it is, of the transcript—because I haven't got pages that correspond and I don't know what your pages are, but there was just an omission, typographical omission, from the statement, and the statement is: "Ninety-five per cent of the vessels that were loaded and discharged by our

company during the years 1936 to 1940, inclusive, were destined to foreign countries." I ask, because it is a fact, that there be added after the word "to," the words "or arrived from" foreign countries.

Mr. Slove: You want to add that as though Mr. Dougherty has so testified?

Mr. Hellawell: Yes, and I ask for that stipulation.

Mr. Slove: All right; I have no objection to adding those words.

Recross-examination.

By Mr. Slove:

Q. Now, at the last hearing I don't recall now, Mr. Dougherty, whether I asked you or not how many people are employed by your company at your office in 2 Broadway.

A. I'd say approximately twelve or fourteen.

Q. Those are in addition to the superintendents that you mentioned at pier points away from your office?

A. They are additional employees.

Q. Do you have any employees stationed at any point outside of the City of New York?

A. No, we don't.

[fol. 75] Q. Does your company own any property outside of the City of New York?

A. No.

Q. Now, in describing your method of operation at the last hearing, you stated that it was up to the superintendent, your superintendent, to get a foreman and the men to do the necessary work, do you remember that?

A. That's right.

Q. Now, you also said that it was the superintendent, not the foreman, who would determine how many men were necessary, is that correct?

A. Yes.

Q. Well, now, how was that done?

A. They would merely tell the foreman how many men he would employ——

Q. I mean from what source was the superintendent able to determine how many men would be required in any given job?

A. Through his experience in having handled cargoes before.

Q. Well, now, is there any actual calculation necessary to be made to determine that fact?

A. Oh, yes, according to how large the operation is.

Q. Well, you would have to make a plan before you can determine it?

A. Well, you do it according to your experience in having handled previous cargo, either loading or discharging.

Q. Well, taking a specific case—I will ask you first referring to Taxpayer's Exhibit 9—does this refer to one special job that was done?

A. That's right.

Q. Do you remember this particular case?

A. No; we probably handled several hundred vessels since.

Q. Well, would this include everything that was done in connection with this loading operation?

A. Yes.

[fol. 76] Q. This invoice?

A. That's right.

Q. As reflected in Exhibit 9?

A. That's right.

Mr. Hellawell: I move to strike out the question, Mr. Slove, as not being comprehensive enough. It isn't everything that is done; it's the result of everything that was done. Naturally, you don't mean by your question, I assume, that by everything that is done it includes whether men put certain drafts of cargo and put it into the vessel and that they used the winches and——

Mr. Slove: No. I don't mean it from that sense. I am just referring to whether this is the entire job or whether this is for part of the work.

Mr. Hellawell: I see—in that sense.

Mr. Slove: Maybe it took only one day and maybe took six months, and there would be several bills for it, so I wanted to know whether this included the entire loading of this boat.

Mr. Hellawell: Then I have no objection to that.

Q. Now, then, when this order came in from Norton, Lilly & Company, did you or your superintendent know what the total tonnage was to be loaded?

A. As a rule we know approximately but not definitely.

Q. But when the order is given are any figures submitted to you?

A. Yes, but they are subject to change. They may what they call "shut out" some of the cargo and add other cargo in place of it. The shipper isn't able to bring the proper [fol. 77] cargo to the vessel. Those things are always tentative up until the time the vessel is completely loaded.

Q. This order is given to you at the time when the vessel is empty?

A. That's right.

Q. And when it's given to you are you advised as to what the capacity is?

A. Yes.

Q. And when the cargo is furnished the customer knows that the vessel will take it?

A. We keep them informed during the loading as to the additional capacity of the vessel because you can't tell definitely when a ship starts exactly how much it will take. They may ask us to measure the empty space in the vessel from time to time and then they will gauge additional cargo.

Q. At what point is your company called in with relation to the docking of the steamer in New York?

A. Well, they tell us where the vessel is going to dock and how many gangs of men are required to work the vessel, and then we go ahead and start the job.

Q. Are you given these facts after the vessel is actually docked at a pier in New York?

A. No; usually before she docks.

Q. Shortly before?

A. Yes.

Q. In other words, when the customer, Norton, Lilly in this case, expects a vessel to come in from some outside port, they prepare in advance to have it loaded?

A. That's right.

Q. Shortly after it's docked?

A. Yes.

Q. Now, how soon after it is docked does the loading commence?

A. Usually as soon as possible.

Q. Would you say within a few days?

A. Within a few hours.

[fol. 78] Q. Well, isn't it customary to have the ship supplied first, overhauled, repaired, conditioned, and so forth?

A. That depends on the condition of the ship whether it's necessary. Usually not.

Q. Usually a vessel has to be refueled after it docks, doesn't it?

A. They usually do that during the process of loading.

Q. That doesn't interfere with your work?

A. It might stop us for a while but it's part of the necessary service.

Q. Well, isn't it more often that they will get that out of the way first?

A. No, usually during the loading—either during the loading or after the loading; very seldom before.

Q. How about cleaning up of the vessel and emptying out the storage places, when is that done?

A. That is done after the vessel discharges, before the loading is started.

Q. Well, then, it's first necessary to discharge the vessel before it is loaded?

A. Not necessarily, because she may come here without any cargo and start loading; most of these vessels did.

Q. Most of the vessels that you had dealings with came in unloaded—empty?

A. That's right, empty. They go from Australia to England; they unload in England; and they come over here to load for Australia again.

Q. There wasn't anything coming in during this period of time?

A. No.

Q. Although you did do some business of unloading?

A. Some, but not very much.

Q. Now, then, getting back to the specific instance, as near as we can, covered by this invoice (indicating), you [fol. 79] would be told by Norton, Lilly in some way approximately how much tonnage was expected to be placed on that ship?

[fol. 79] A. That's right.

Q. Now, was that communicated to you in any written form?

A. Usually they give us what they call a cargo list, which is a tentative statement of what is going aboard the vessel.

Q. In tonnage?

A. Yes.

Q. And materials?

A. That's right.

Q. So that in this case where it speaks of autos, heavy lifts, bar iron, pine, steel plates, old newspapers, case oil, structural steel, bag cargo ore,—those are the various materials that you would understand were to be loaded on this steamer?

A. Those are the materials that actually were loaded on the vessel. The tentative list that we would get wouldn't agree with that.

Q. Not in quantities?

A. During the process of loading there would be changes.

Q. When would you get this tentative list that you speak of?

A. Maybe three or four days before the vessel docked.

Q. And what was the purpose of that?

A. So that we could intelligently plan the loading before we started; put the proper materials in the proper places.

Q. Could you do that without the stowage plan?

A. Well, that is a final plan after the vessel is loaded. Before the vessel is loaded we make up the tentative plan of how we expect to load the vessel.

(Discussion off the record.)

Q. When you make this plan based on the tentative list, you don't yet have a stowage plan?

[fol. 80] A. That's right; the stowage plan is made up as the vessel goes. The other is the tentative plan of how we expected to load it, which is never completed according to the tentative plan because adjustments must be made.

Q. It looks something similar to the final plan that is drawn up?

A. Yes, but not as complete as that.

Q. Now, can you tell from this plan or from the tentative plan that you make up approximately how many men will be required to do the job?

A. Pretty well.

Q. Is that one of the reasons that you make the plan so you can be prepared to know how many employees you will require to do the job?

A. No, that is secondary, because we can tell that from day to day according to what cargo we load. The idea of the tentative plan is that the vessel be properly loaded, and should be stowed properly. There are certain things that can't be loaded with other things; have to be in different

hatches. The weight must be properly distributed in the vessel.

Q. In other words, from the tentative plan you can tell that there is a certain number of pounds of various types of equipment, and with that knowledge you can tentatively plan just approximate where the various materials in the various weights will be placed?

A. That's right.

Q. And you do make such a plan?

A. Yes.

Q. Now, where is that plan made, and by whom?

A. That is usually made by the superintendent.

Q. At his office?

A. At his office or at his pier as a rule.

[fol. 81] Q. Now that may all be done before the steamship reaches New York, might it night?

A. Well, usually, yes.

Q. It usually is done before?

A. Yes.

Q. And after the steamer gets there some time passes before the material is actually brought to the dock for the purpose of loading?

A. Not necessarily. Very often your vessel starts loading immediately upon docking.

Q. Is the material already there?

A. The material is there; it usually is.

Q. Is that because the customer arranges to have it there at or about the time the steamer docks?

A. That's right.

Q. Now, how are you advised to actually commence the loading operation?

A. We usually are ordered by the operating manager of the steamship company.

Q. He calls up the superintendent?

A. He calls the superintendent.

Q. And tells him that the stuff is there and the boat is there?

A. That's right.

Q. Is that the form that it takes, a telephone conversation, or is any writing——

A. No, it's always telephone.

Q. In other words, the plans for that already would have been received prior to that and this is simply the signal that the time has come to begin work?

A. That's right; it's confirmation of a former arrangement.

Q. Now what, generally, would you say is the time element between those two things—the time that you get the first notice that there will be some work and the time that you are notified that you are to go ahead with the work?

A. A couple of hours.

[fol. 82] Q. Does it ever take a day or more than a day?

A. No. We might be told at four o'clock this afternoon to start a vessel tomorrow morning. That is about the limit of that time we are given.

Q. And then this preliminary plan would only be made within those few hours?

A. No, the preliminary plan might be made two or three days before.

Q. Then your answer isn't correct when you say two or three hours? I asked you how much time at the outside would elapse when you are first notified that you are going to have a job and the time when you are given the signal to go ahead with your men.

A. We would be notified about the job probably two or three days before, but the actual time of starting would be arranged within a matter of a couple of hours.

Q. Yes, I understand that. So there would be two or three days that you have in which to make your preliminary plan?

A. That's right.

Q. Then on the day that you are to start what happens when the superintendent gets that notification that the boat is ready to be loaded?

A. Then he starts the job.

Q. How does he go about getting the men?

A. The men come to the dock and they are hired on the dock, and they go to work.

Q. I will ask you this preliminary question: Does the workday begin at any particular hour?

A. It may begin, according to the rules of the union, that the men must shape, as they say, at eight o'clock or one p.m. or seven p.m. at night.

Q. Would you say that generally throughout this period that eight a.m. would be the usual starting time?

A. Usually; more often than not it is.

[fol. 83] Q. So that generally the superintendent would know that eight o'clock he was to start this loading operation?

A. That's right.

Q. And did your office have any preliminary arrangements prior to that?

A. No.

Q. There was nothing to do?

A. No, the men merely come to the dock and——

Q. I mean before the actual work, was any written record made?

A. No, it's all done by telephone between the operating manager and our superintendent on the dock.

Q. How about the order itself; is that recorded?

A. No, nothing in writing. Everything is oral between the operating manager of the steamship company and the superintendent.

Q. Well, you have this preliminary list; that was in writing?

A. Yes.

Q. You say that is the only thing in writing between the two parties up to that point?

A. That's right.

Q. That and the basic underlying contract, of course?

A. Yes.

Q. Now, then, at eight o'clock, then, of the day that the work is to begin the superintendent goes out and there are men around the piers from which he can get his crew, so to speak?

A. That's right; they come right on the dock and are hired there.

Q. They are hired right then and there before the workday begins?

A. Yes.

Q. Now, in a case such as this, would the superintendent hire or know how many men to hire to do the entire job?

A. No, that is done from hour to hour, according to the conditions as they may arise.

[fol. 84] Q. He wouldn't know whether this was going to take a day or two or three, would he?

A. Only approximately.

Q. What basis did he use in knowing how many men to hire? Is there a maximum number of men that can work at one time?

A. No maximum, but there is a minimum. We can't hire less than twenty men at a time. That is a union regulation. We may require more.

Q. Well, as a matter of business expediency is it the practice to have men work in gangs of twenty?

A. Yes.

Q. And if it is a big job there will be just so many more gangs, is that the idea?

A. So many more gangs and so many more men in the gang, according to what we are handling, according to the type of the vessel. It may be a different type of vessel that requires more men in the holds.

Q. All that is determined as the work is going on?

A. That's right.

Q. The superintendent can tell whether he needs five gangs or ten gangs, or whatever the number may be?

A. That's right, according to how the cargo arrives.

Q. That is, by that you mean how the cargo arrives from some point in New York to the dock?

A. Well, not necessarily in New York——

Q. Well, from some point away from the dock to the dock?

A. Some outside point; most of it comes from Jersey.

Q. Now, all that material is in sealed cartons or containers as it reaches the dock, isn't it?

A. No, it may be in any condition; it may be steel that has no container. It may be a truck that has no boxing on it.

Q. It is all labeled for shipment, though?

A. Not necessarily.

[fol. 85] Q. It may not be?

A. They may send the papers along with it to identify it. Usually it's not labeled.

Q. Do your employees have anything to do with shipping documents?

A. No.

Q. That is handled by the steamship company?

A. Yes.

Q. Or their agents?

A. That's right.

Q. Such as the Norton, Lilly & Company?

A. That's right.

Q. You people don't even see them?

A. No, we have nothing to do with them; ours is only a physical operation.

Q. Does Norton, Lilly & Company have any representative on the dock while this operation is going on?

A. Yes; they have their own superintendent, clerks, checkers, watchmen.

Q. Do they check your men?

A. Yes.

Q. They check your time, the time of your men?

A. Yes; either they or the ship's officer—one or the other.

Q. Do they have their own time clerks or do they check the work of your time clerks?

A. Well, as a rule the checking is done by the ship's officers as to our operation.

Q. The time is checked?

A. Yes. In other words, we have slips signed by the chief officer which certifies as to our service.

Q. When are those slips signed?

A. They may be signed daily; maybe not until the ship has completed loading.

Q. Are they signed for a number of hours or number of men?

A. Both number of men and number of hours.

Q. Does that indicate the number of men—withdraw that.

[fol. 86] Q. Are any of those slips available in your company's files?

A. I think we have some, yes.

Q. Could you locate slips for this particular invoice, Taxpayer's Exhibit 9 in evidence?

A. I think so.

(Discussion off the record.)

Q. Will you produce the slips for this job?

Mr. Hellawell: I object to that. I can't see the materiality of it, Mr. Slove.

Mr. Slove: I think that to the extent that it will establish the nature and extent of the operations of this company in New York City it's material.

Mr. Hellawell: It isn't a question of how many hours were spent in a particular operation. It's the amount of work done and the nature of the work that was performed in New York City that is material and the only material

thing here. Whether we spent in this service five hours or a hundred hours on any particular ship is absoutely irrelevant to the inquiry here. The thing is only cluttering up the record and doesn't mean anything. What does it mean?

Mr. Slove: I think it's quite vital to the issue as to the local nature of this work.

(Discussion off the record.)

Q. Can you tell from your records actually how much time was spent by your employees in the entire loading operation for this job, reflected in Taxpayer's Exhibit 9? [fol. 87] A. No. As I said before, it would be amalgamated with the other jobs going on at the same time.

Q. You can't tell from your records how much time any job took?

A. No; they are all in one pool, the whole business.

Q. You mean the time is all pooled together?

A. That's right.

Q. You do know, however, from your own experience that some jobs take longer to load than others?

A. Yes.

Q. That would depend on the size of the steamer and the size of the cargo, and so forth?

A. And the kind of the cargo.

Q. And in this taxable period you did have some jobs that took a whole day?

A. Yes.

Q. What would you say was the outside length of time that any particular job took?

A. Maybe a week.

Q. Which would mean that you have stevedores employed for a week?

A. That's right.

Mr. Hellawell: Longshoremen.

Mr. Slove: I think we used the term interchangeably, don't we?

Mr. Hellawell: The real term is longshoreman. Longshoreman is a more accurate term.

Mr. Slove: Does stevedoring take in more than the work of the longshoremen?

Mr. Hellawell: Stevedoring is the operation.

Witness: Stevedore is the loading head of the ship—the superintendent.

Mr. Slove: Stevedoring is supplying the longshoremen to do certain things?

[fol. 88] Mr. Hellawell: No, not that accurately. Stevedore is a man who is responsible for the loading of the ship whereas the longshoremen are the men who actually do the physical work.

Mr. Slove: I see.

Q. So that when I asked you earlier today whether the superintendent could tell in advance how many longshoremen would be required to load the entire cargo I think your answer was that he wouldn't know in advance.

A. No.

Q. But he would continue to engage the men sufficiently as required until the job was completed?

A. That's right. He has to be governed by the conditions of the arrival of the cargo and so forth.

—. It might be advisable to have on the record your explanation as to what records are kept or are available from which you determine how to calculate your charges to your customer, such as is reflected in Taxpayer's Exhibit 9. Can you explain that briefly?

A. I can't more than I have already told you; we bill according to the amount that they give us. In other words, this is what they give us and we bill them back.

(Discussion off the record.)

A. (Continuing.) I think the simplest way to put it would be to say that we accept from the company a summary of the ship's manifest and we bill them back according to those figures.

Q. The ship's manifest being a list of all the bills of lading containing all of the shipments or cargo that goes on that ship?

A. That's right.

[fol. 89] Q. And that summary or manifest is the basis from which the company gives you the total weight, and you in turn accept that weight as a basis for making your invoice such as Taxpayer's Exhibit 9?

A. That's right.

Mr. Slove: I think we will suspend at this point.

(Discussion off the record.)

(Hearing adjourned to September 15, 1943 at 10 A. M.)

[fol. 90] Office of the Comptroller

Bureau of Excise Taxes

September 15, 1943 Room 510 10 A. M.

In the Matter of Carter & Weekes Stevedoring Co., A-11-13 Produce Exchange, New York, N. Y. (M-133438.) Business Tax Deficiency

Minutes of Hearing of September 15, 1943

Before Solomon Wittenberg, Presiding Officer

For the Comptroller: Jacob Slove, Esq., Assistant Corporation Counsel.

For the Taxpayer: Attorney; Edwin V. Hellawell, Esq., 70 Pine Street, New York, N. Y.

Witness: Charles E. Dougherty (Recalled). Andover, N. Y.

Mr. Wittenberg: This is a continuation of a formal hearing last held on July 30, 1943, in connection with a determination by the Comptroller of the City of New York against the Carter & Weekes Stevedoring Company, A-11-13 [fol. 91] Produce Exchange, New York City, assessing a Business Tax covering the period January 1st, 1937 to December 31st, 1940, in the total sum of $1,828.97 of which $1,594.54 is principal and $234.43 is the interest and/or penalties.

Charles E. Dougherty, recalled as a witness on behalf of the taxpayer, was examined and testified as follows:

Recross-examination.

By Mr. Slove:

Q. Mr. Dougherty, at the last hearing we were speaking of slips that you had your customer or somebody on the ship sign to evidence the work that was done by your employees. You haven't any of those slips here, have you?

Mr. Hellawell: Well, as I understood it after the last hearing that request was waived because the slips had no materiality and I was not under the impression that the production would be requested.

Mr. Slove: Well, as I indicated, the purpose of the slips was to indicate the location of the work and to indicate to what extent it was confined to New York City. I understand you are prepared to concede that——

Mr. Hellawell: We will concede that all the work except a very small portion of it during these years in question was actually performed on vessels moored to piers in the City of New York.

Mr. Slove: All right.

[fol. 92] By Mr. Slove:

Q. Now, can you just tell us whether these slips indicated the address of the pier where the work was actually done, where the loading was done?

A. Usually not.

Q. Did they indicate the name of the vessel that was being loaded?

A. Well, they might have either one or the other, but not both.

Q. I see. You could, however, identify a particular slip with a particular operation that you had worked in this taxable period, could you not?

A. At the time the operations were so extensive that I wouldn't be able to recall any specific operation now after a period of years.

Q. If you looked at the slip and all the information on the slip wouldn't that——

A. Wouldn't mean anything to me now.

Q. Did any other independent records that you have show the amount of time that was—the cost of the time that was actually spent in unloading an operation?

A. No, we don't keep that after the operation is finished. We just——

Q. You have no permanent cost records?

A. No, we haven't.

Q. Now, when the merchandise was—withdraw that.

Q. Before you commenced your activity, your company commenced any activity, I believe you previously testified that the merchandise was already or previously prepared and placed on the dock, is that right?

A. That's right.

Q. Now, you weren't notified where the merchandise was [fol. 93] destined for, were you, I mean specifically as to individual consignees?

A. Oh, yes, we'd have to know what port the merchandise was destined to go.

Q. Well, you mean just the port, the name of the city.

A. That's all, yes.

Q. But you weren't interested, you didn't actually know the name of the individual consignee, did you?

A. No.

Q. You weren't concerned with the ultimate destination.

A. No, we were only interested in the immediate port of destination.

Q. Nor were you concerned with how the merchandise would ultimately be delivered to the final consignee after it reached the port.

A. No.

Q. You don't know how that was effected.

A. No.

Q. Now, what is the mechanical operation of loading, what type of equipment is used? I think you covered it generally, but——

A. I think I did. We put in what we call a draft, we place the cargo in a draft.

Q. Is that a piece of equipment?

A. That's a piece of equipment; maybe a net, a rope net; maybe a rope sling; it may be a wire sling.

Q. Something that's attached to a pulley.

A. Yes, that's right.

Q. Yes?

A. A winch and a hook, the winches are aboard on the vessel attached to a wire fall and then a hook on the end of that wire fall, and the hook picks it up through the mechanics of the winch—steam winch, usually, or electric winch—raises it over the ship and down into the hold.

(Discussion off the record.)

[fol. 94] Q. Whose property is that draft that you speak of?

A. Well, that would be the property of the ship or of the consignee, I wouldn't know which.

Q. Is it part of the ship's equipment?

A. No, the draft is the cargo. It is the freight itself.

Q. Oh, the draft is the cargo itself.

A. That's right.

Q. Well, I understood you to describe it as a piece of equipment.

A. No.

Q. It is used in loading?

A. It is the shipment; the equipment confines the draft.

Mr. Hellawell: It is a collection of cargo which is made up into a draft. Any collection of cargo that could be handled by a sling is a draft.

By Mr. Slove:

Q. Well, how about the sling? Who owns the sling?

A. We would own the sling, or maybe perhaps the ship: sometimes we have——

Q. Do you own the sling in some cases?

A. Sometimes we have an arrangement where the ship supplies the sling and other times we would supply it.

Q. Well, do you have a quantity of slings?

A. Oh, yes.

Q. You have a place where those things are kept?

A. We keep them on the dock.

Q. Do you have a tool room or some kind of room where you keep various equipment?

A. Yes, we keep them on the docks. Every dock that we [fol. 95] operate on we have what we call a gear room and in that we keep the equipment necessary for loading the ship.

Q. What other equipment would you keep in that room?

A. That's all, just what we——

Q. Do you have anything with wheels, do you have any pulleys?

A. Yes, we have some pulleys.

Q. Dollies?

A. Might have, depending on the operation.

Q. Well, apart from any operation, you have a certain amount of equipment that the company owns at all times.

A. Oh, yes.

Mr. Wittenberg: Mr. Hellawell, have you any other questions?

Mr. Hellawell: I have no other questions.

I want to address myself to the Conferee who has been presiding at these hearings and ask for a dismissal of the proceedings and cancellation of the tax on the ground that

this specific question, the only one involved here, has been specifically ruled on by the Supreme Court of the United States in the case of the Puget Sound Stevedoring Company which has previously been cited.

The nature of the services performed by Carter & Weekes Stevedoring Company during the years in question, 1937 to 1940 inclusive, were, as the testimony shows without contradiction, ninety-five per cent foreign commerce and five per cent interstate commerce, as to which the Supreme Court has said there shall be no tax because it is not a local [fol. 96] operation and not subject to a local business tax. The services were a necessary and integral part of foreign or interstate commerce, are, in fact, interstate and foreign commerce and so not subject to tax, and I ask for cancellation of the tax and dismissal of the proceedings.

Mr. Wittenberg: Have you anything further to say, Mr. Slove?

Mr. Slove: No.

Mr. Wittenberg: We'll mark the case closed; decision reserved.

[fol. 97] PETITIONER'S EXHIBIT 1 IN EVIDENCE

(Comptroller's Notice of Deficiency Tax Assessment with Schedules)

(Printed herein at pages 27-29 as part of the transcript of proceedings.)

PETITIONER'S EXHIBIT 2 IN EVIDENCE

(Tax Return for Year 1937)

(Printed herein at page 25 as part of the transcript of proceedings.)

PETITIONER'S EXHIBITS 3, 4 AND 5 IN EVIDENCE

(Tax Returns for the Years 1938, 1939 and 1940)

(Printing omitted pursuant to stipulation at page 109.)

[fol. 98] PETITIONER'S EXHIBIT 6 IN EVIDENCE

Stevedoring Contract

American and Australian Line—Loading

Memorandum and Agreement between Norton, Lilly & Company, New York, as agents for the American and Australian Line, of London, of the first part and Carter & Weekes Stevedoring Co., Stevedores of New York, of the second part.

1. The party of the first part agrees to give the above mentioned stevedores of the second part stevedoring work on all vessels owned, controlled or chartered by the party of the first part loading at the Port of New York, provided that the stevedoring is not otherwise fixed by charter party; and the above named stevedores hereby undertake to perform the stevedoring work on the following terms and conditions.

2. The stevedores shall take delivery of goods, whether by land or water, at the point where the shipper is bound to deliver them, according to the custom of the Port of New York, and/or the Produce Exchange Rules, transport the cargo to, and load it on board the oncarrying steamer with all due dispatch, and safety and properly stow same according to the destination, laying dunnage and platforms in the holds; all to the satisfaction of the Board of Underwriters of New York, and/or other surveyors, and/or the party of the first part, and/or the owners, and/or the charterers or other accredited representative, and the stevedores shall also supply extra labor, as required, in accordance with Paragraph #9.

[fol. 99] 3. The stevedores shall supply all the necessary tackle and appliances, but shall have the use of cargo appliances as on Board, including rope and steam as customary.

4. The stevedores shall be paid for loading outward cargo, as before mentioned, at the following inclusive rates:

	At Yard	At Dock
Case Oil (Kerosene, Benzine, Nap-tha, Turpenti[illegible], Gasoline and other like products) per Case high top or low top; other size packages at proportionate		

	At Yard	At Dock
rates, *Stevedores paying hoisting charges when steamer loads at oil yards*	$.03¼	$.03¾
General Cargo, per ton of 40 Cubic feet or 2240 lbs. for pieces up to 5 tons weight		1.15½
Pieces over 5 tons weight, but not exceeding 10 tons weight, per ton, weight or measurement		1.32
Pieces over 10 tons weight, per ton, weight or measurement		1.48½
Locomotive and Car Material, per ton, weight or measurement		1.37½
Structural and Bridge Material, per ton, weight or meas.		1.54
Grain, Flour Meal or Samp (in bags), per 2240 lbs.		1.07¾
Tobacco, per hogshead		1.32
Rosin, per 2240 lbs.		1.59½
[fol. 100] Railroad Iron, up to and including 45 feet, per ton		1.15½
Railroad Iron, over 45 feet, and up to 60 feet, per ton		1.21
Bar Iron and pipes of all sizes, per ton		1.15½
Steel Plates, per ton		1.43
Pig Iron, per ton		.99
Newsprint Paper per ton (Weight)		1.43
Waste Paper in bales, weight of 2240 lbs.		1.43
Grain—Stowing bags—per 1000 bushels		16.50

Tonnages as per steamers manifest, which figures are to be mutually accepted, with the understanding that bridge and structural iron, locomotive and car material and heavy pieces to be figured actual weight and measurement; domestics; paper and cigarettes to be figured measurement; all other cargo to be figured as now carried.

5. These prices to cover the stowage of cargo in any part of the vessel in which it is determined to carry cargo for the voyage, including building up wings when midships are required to be kept open, also to cover any trucking within ship's length plus 100 feet each end. Any stacking or extra trucking to be charged for as extra labor.

6. Coaling. If required by owners, coal to be put on board and stowed in permanent, and/or reserve bunkers, and/or bridge deck, and/or deck space, and/or holds, including trimming.

For quantities up to and including 200 tons in any one ship, at cost plus 10% and Liability insurance.

For quantities over 200 tons, at $1.10 per ton.

[fol. 101] 7. Shifting bunker coal, if required, at cost plus 10% and liability insurance.

8. Heavy Lifts. Stevedores to use ship's gear for loading pieces of any weight when ordered to do so by ship's representative. Ship to pay all costs of floating derrick whenever used. Stevedore to be paid special rates for stowing pieces over 5 tons weight, locomotive and car material, structural and bridge material, as per schedule of rates under clause #4.

9. Extra Charges. If required by the Captain and/or other accredited representative, the stevedores are to supply men for cleaning up the holds, mooring and unmooring steamers, and similar work at the following rates:

		Gen'l Cargo	C/s Oil at Piers Per Hour	C/s Oil at Yard
Weekdays 8 AM to 12 noon—1-5 PM. Men		$1.07	1.36	1.65
Except Saturday afternoons	Foreman	1.38	1.56	2.05
All overtime, including Saturday afternoons and all Meal Hours	Men.	1.52	1.94	
	Foremen.	1.82	2.19	

10. Overtime. The Stevedores are to be paid at the following rates:

Men and Foremen—Overtime including Saturdays afternoons, and all Meal Hours	.45	.58	Men
		.63	Foremen.

11. Winch Time. The Stevedores are to supply winchmen at the following rates:

[fol. 102]

Week Days	1.07	1.36	1.65
Overtime, including Saturday afternoons and all Meal Hours	1.52	1.94	

Bulk, Cargo, ballast and coal 5¢ per hour additional.

EXPLOSIVES.

The Stevedores are to be paid at the following rates:

Weekdays 8 AM to Noon & 1 to 5 PM.	Men.	2.14 per hour
except Saturday afternoons	Foremen.	2.76 " "
All Overtime, including Saturday	Men.	3.04 " "
afternoons, and all Meal Hours	Foremen.	3.3[illegible] " "

When men are specifically ordered out from New York and/or Brooklyn to work on the North and East River

above 75th Street, or on Piers at Weehawken, Communipaw, West New York, Long Island City, and/or Staten Island, carfare in excess of that spent in traveling to their usual place of employment shall be allowed. Men specifically ordered out from New York, and/or Brooklyn to work at Yonkers, Bayonne, Claremont, Carteret, Chrome, Edgewater and/or Port Newark shall receive the equivalent of 2 hours pay at the prevailing day rate, plus cost of transportation.

Legal Holidays are: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday on the Jersey Shore, Decoration Day, Fourth of July, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving, Christmas and such other National or State Holidays as may be proclaimed by Executive authority.

12. Steamer is to supply all necessary dunnage.

[fol. 103] 13. The Stevedores shall be responsible for any damage due to the negligence of the Stevedore, or his workmen, that may be done to the ship and/or cargo in connection with the operations to be carried or in pursuance of this agreement, and shall indemnify and save harmless the party of the first part, and/or the owners, and/or the charterers on account of such damage, and on account of injuries causing disability or death to workmen employed by the stevedore resulting from the negligence of the stevedore or his workmen, while the said stevedore is engaged in the transportation, discharging and loading or stowing of cargo.

14. The stevedores agree to take every precaution to see that their men do not smoke in holds and also agree that any men found smoking will be dismissed.

15. The Stevedores are to effect, and to keep alive during the continuance of this agreement, a full policy of insurance against employer's and public liability, to cover their employees and the public.

16. The Stevedores shall not sublet any of the work in this contract, except by written consent first obtained from the party of the first part.

17. The Stevedores agrees to give the Steamers the best possible attention and dispatch, and guarantee to provide

sufficient men to carry out the work, but they are not to be held responsible for strikes, or delays for accidents beyond their control.

[fol. 104] 18. This agreement shall take effect from October 1st 1934 and shall continue thereafter subject to three months notice in writing from either side of their desire to cancel same.

19. If at any time during the currency of this agreement, either party should have cause for dissatisfaction with the work done, they are at liberty to cancel same forthwith.

20. It is understood, that in case any disputes arise, the same are to be settled by arbitration, the Lines choosing one man, the Stevedores one man, and if these do not agree, these two to choose a third.

21. The above rates are based on wages paid longshoremen at this time. Should there be any change, same to be adjusted according to the increase or decrease of longshoremen's wages.

Dated at New York this 5th day of December 1934.

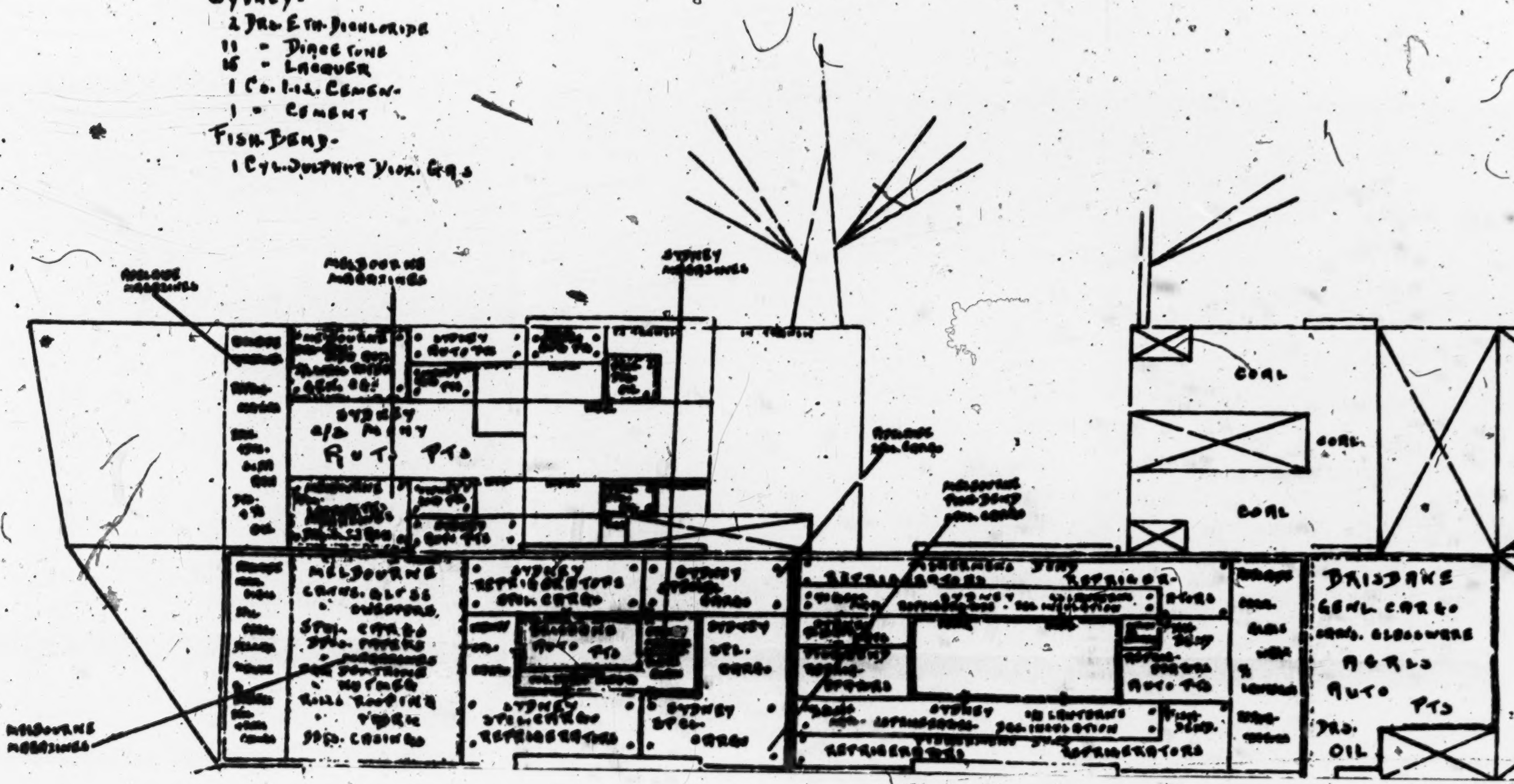
Norton, Lilly & Company, as Agents. Carter & Weekes Stevedoring Co., H. C. Jarvis, President.

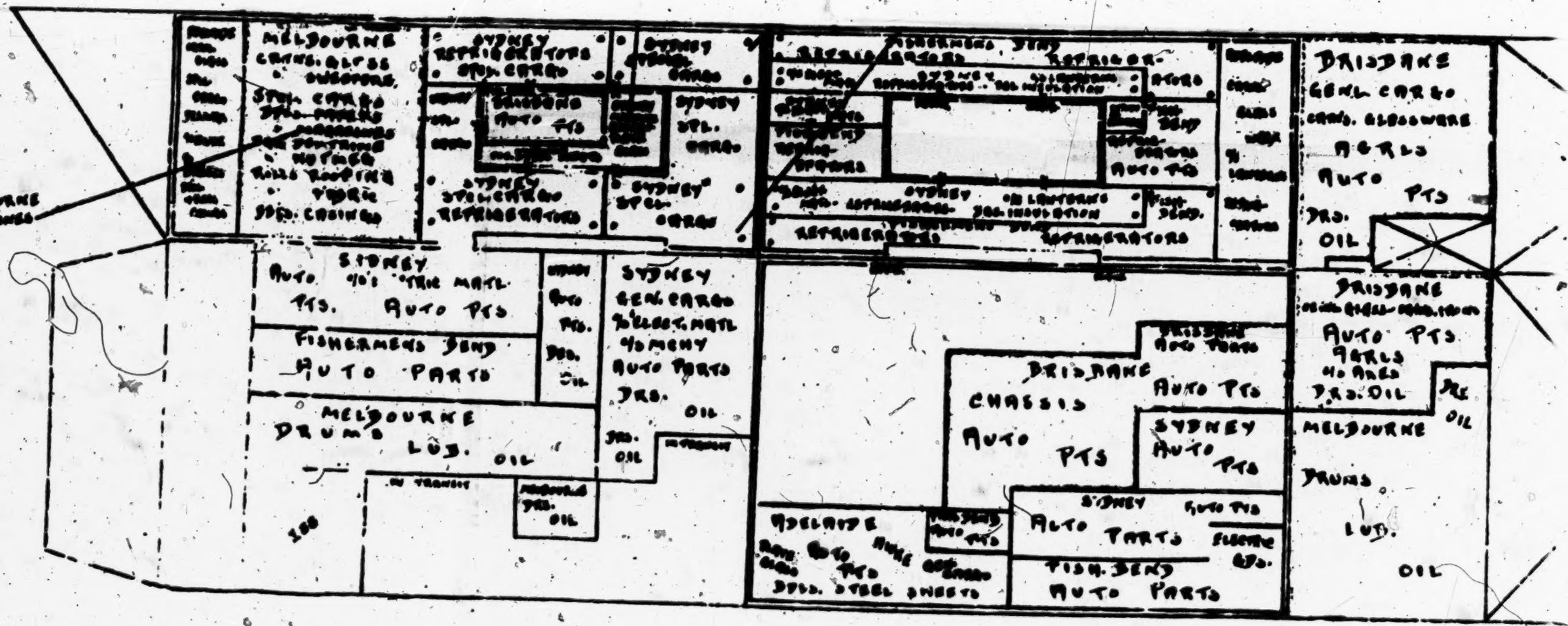
(Back) Norton, Lilly & Co. American Australian Line Contract. Effective 1st Oct. 1934.

(Here follow two photolithographs, side folios 105-106)

TAXPAYER'S EXHIBIT No. 7 IN EVIDENCE
7/30/43 N.D.

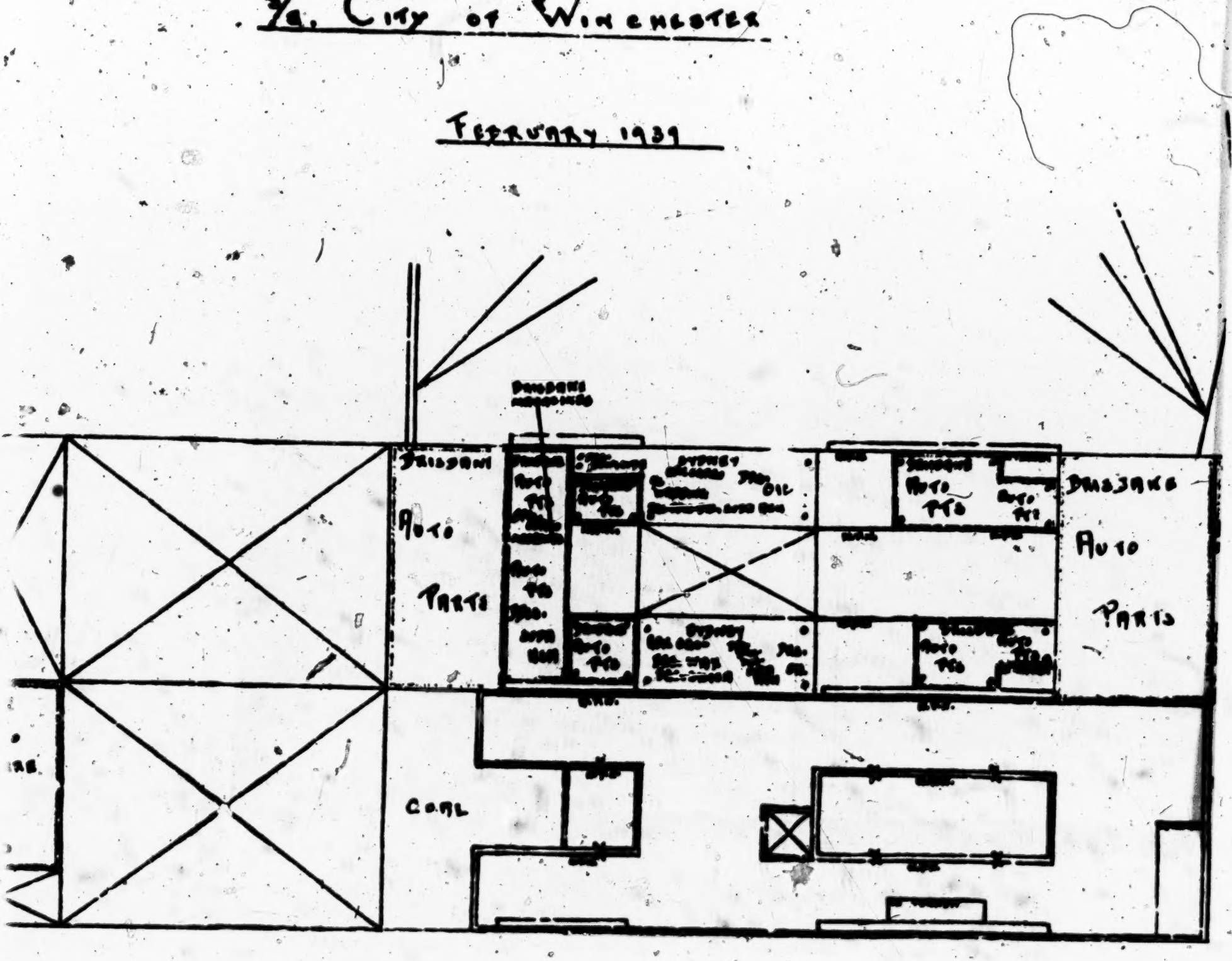
On Deck-
Sydney-
2 Jrs. Eth. Dichloride
11 - Diacetone
16 - Lacquer
1 Co. Ltd. Cement
1 - Cement
Fish Bend-
1 Cyl. Sulphur Dioxide Gas

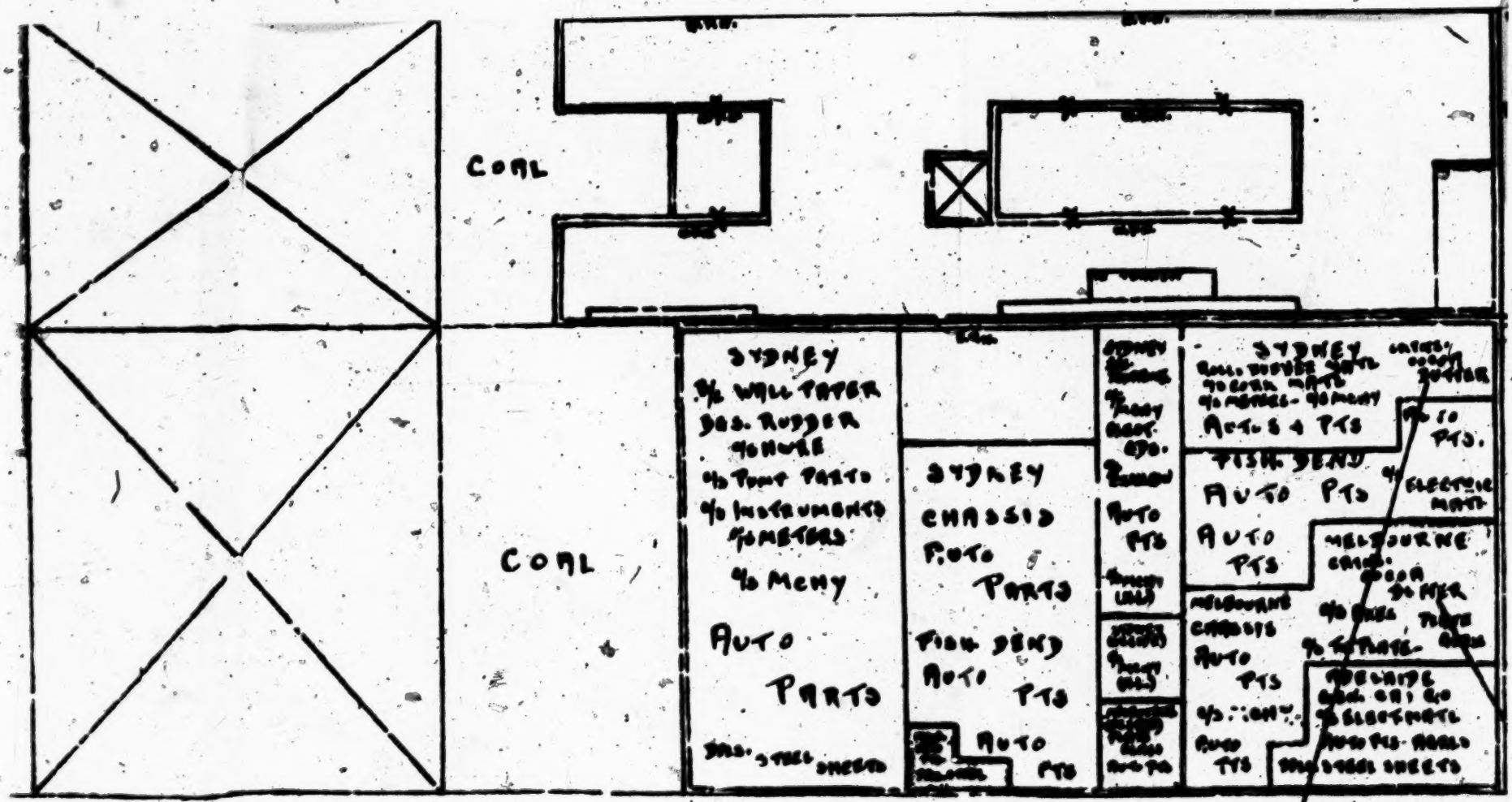



MELDOURNE
SYDNEY
SYDNEY
SYDNEY

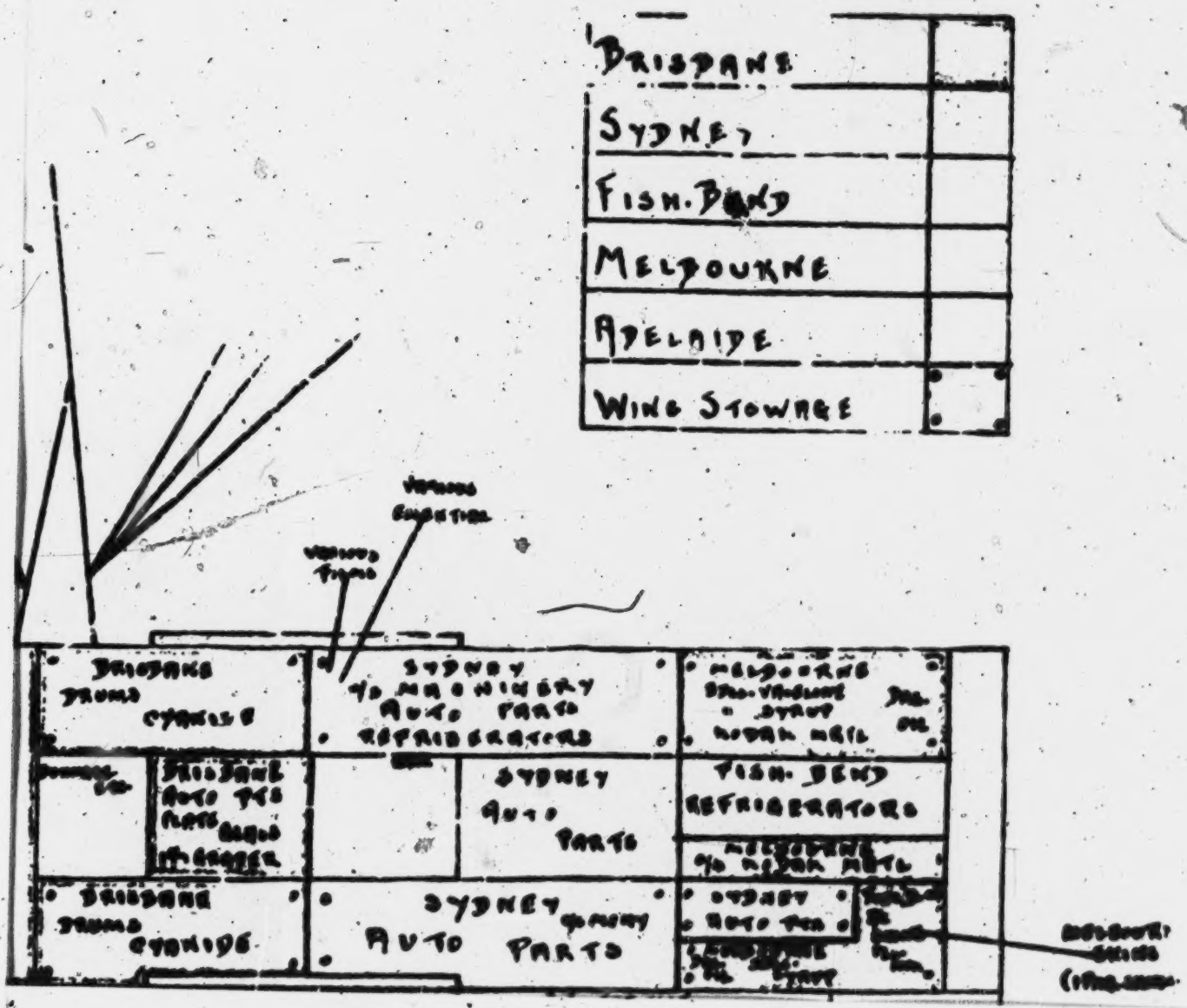
Va. City of Winchester

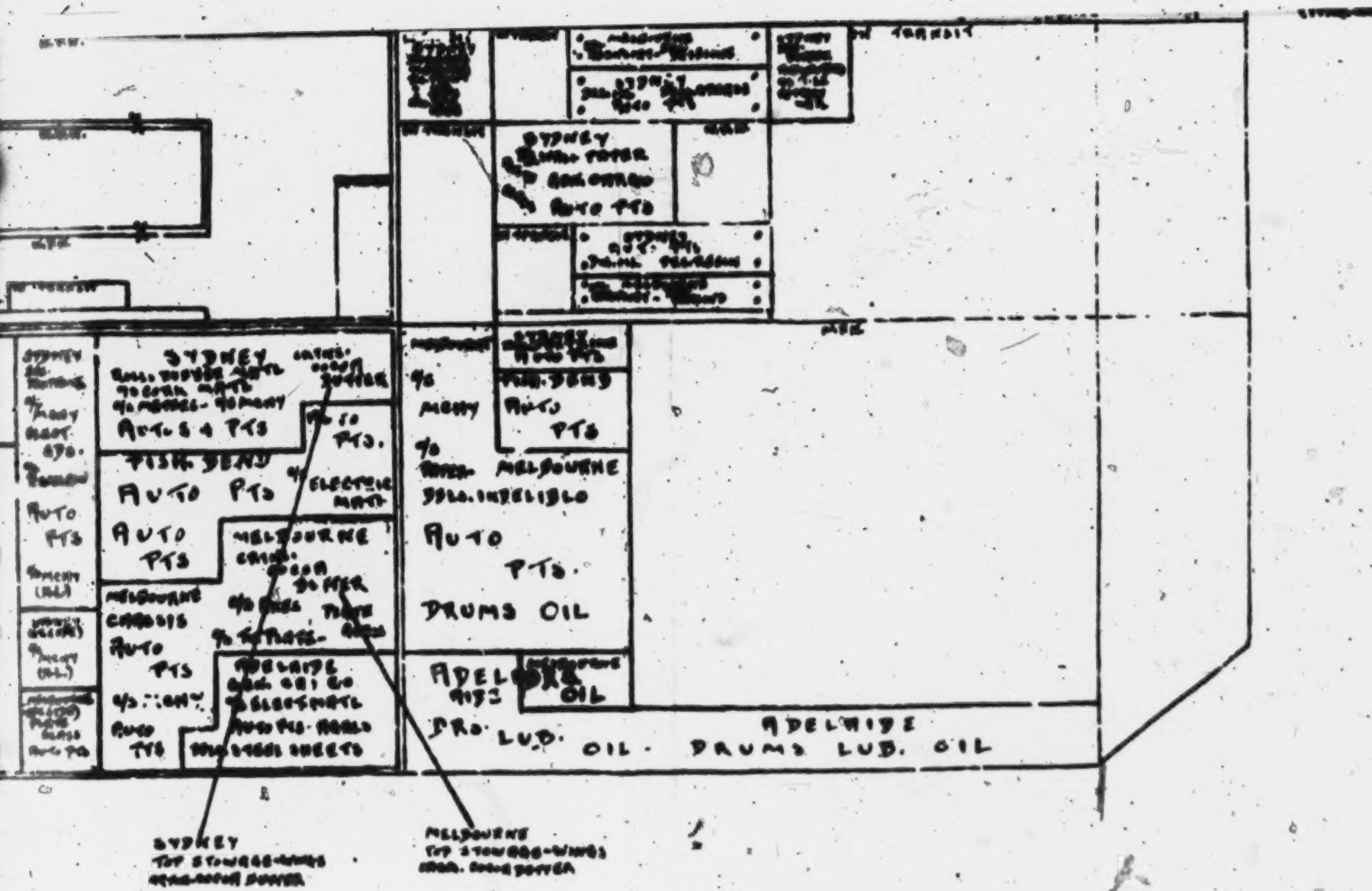
February 1939




COAL
COAL
SYDNEY
% WILL TAPER
DAS. RUBBER
% HOSE
% PUMP PARTS
% INSTRUMENTS
% METERS
% MCNY
AUTO
PARTS
SYDNEY
CHASSIS
AUTO
PARTS
FISH. DEPT
AUTO PTS
AUTO
PTS
SYDNEY
AUTO & 4 PTS
FISH. DEPT
AUTO PTS
% ELECTRIC
MOTS
AUTO
PTS
MELBOURNE
MELBOURNE
CHASSIS
AUTO
PTS
SYDNEY
MELBOURNE

PETITIONER'S EXHIBIT 7.
IN EVIDENCE.




SYDNEY
AUTO PTS
MELBOURNE
AUTO
PTS.
DRUMS OIL
ADELAIDE
PRO. LUB. OIL · DRUMS LUB. OIL
SYDNEY
MELBOURNE

TAXPAYER'S EXHIBIT No. 8 IN EVIDENCE

9/30/43 H-2.

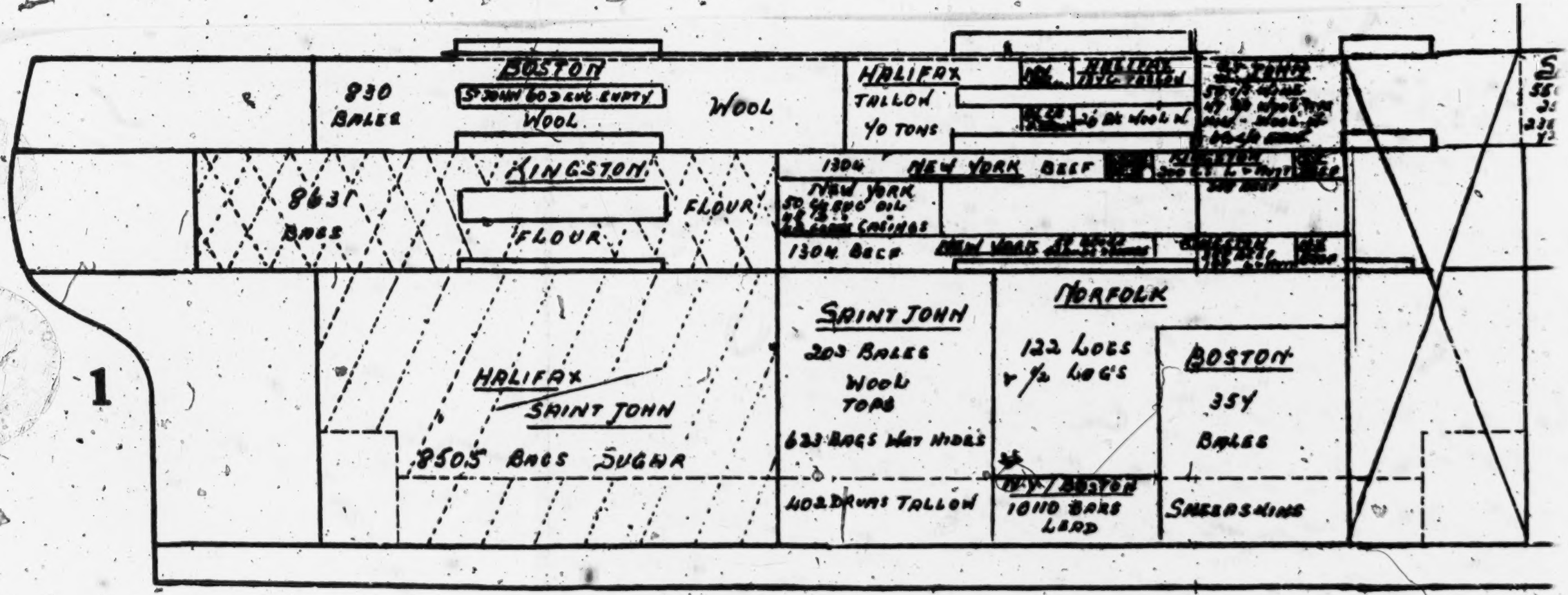
Colour	PORT	Freight Tons	D. W. Tons
	CRISTOBAL		
	KINGSTON		
	NORFOLK		
	NEW YORK		
	BOSTON		
	HALIFAX		
	SAINT JOHN		
			6425

49533 Cu ft Remaining Space
2600 Tons Lifting Available

STOWAGE PLAN S.S.

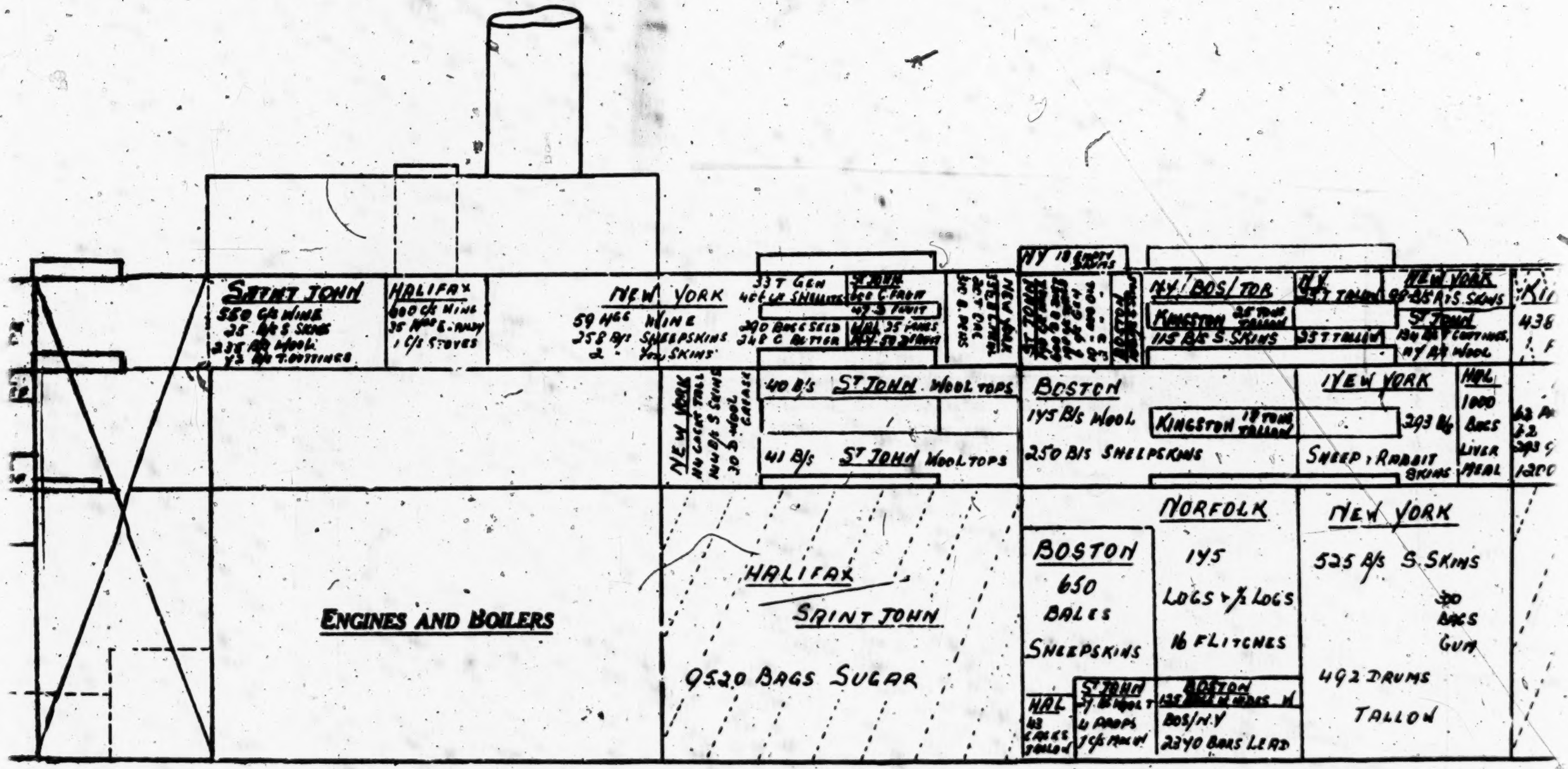
1 SHOW "IN ELEVATION" STOWAGE OF CARGO IN LOWER HOLDS, TWEEN & SHELTER DECKS

2 3 SHOW "PLAN" OF STOWAGE IN SHELTER & TWEEN DECKS


930 BALES
BOSTON
ST JOHN 60 DEAD EMPTY
WOOL
WOOL
HALIFAX
TALLOW
40 TONS
8631 BAGS
KINGSTON
FLOUR
FLOUR
1304 NEW YORK BEEF
NEW YORK
1304 BEEF
HALIFAX
SAINT JOHN
9505 BAGS SUGAR
SAINT JOHN
203 BALES
WOOL
TOPS
623 BAGS WET HIDES
402 DRUMS TALLOW
NORFOLK
122 LOGS
& ½ LOG'S
N.Y. / BOSTON
10110 BARS
LEAD
BOSTON
354
BALES
SHEEPSKINS
1

MONTREAL AUSTRALIA NEW ZEALAND LINE LIMITED

S.S. "KAIKOURA" Voy. 6 From ADELAIDE MELBOURNE SYDNEY BRISBANE To


SAINT JOHN
550 Cs WINE
25 Bls S SKINS
235 BG WOOL
½ Bls T. COTTINGS
HALIFAX
600 Cs WINE
35 MDSE & RUM
1 C/s STOVES
NEW YORK
59 MDSE WINE
258 B/s SHEEPSKINS
2 " " SKINS
33 T GEN
466 LB SHELLAC
47 S TWIST
390 BAGS SEED
348 C BUTTER
NEW YORK
40 B/s ST JOHN WOOL TOPS
41 B/s ST JOHN WOOL TOPS
NY / BOS / TDR
KINGSTON 35 TONS TALLOW
115 B/S S. SKINS
33 T TALLOW
NEW YORK
99 B/S S. SKINS
ST JOHN
436 B/S T. COTTINGS
NY B/S WOOL
BOSTON
195 B/S WOOL
KINGSTON 15 TONS TALLOW
250 B/S SHEEPSKINS
NEW YORK
293 B/S
SHEEP & RABBIT SKINS
MDSE
1000 BAGS LIVER MEAL
ENGINES AND BOILERS
HALIFAX
SAINT JOHN
9520 BAGS SUGAR
BOSTON
650 BALES SHEEPSKINS
NORFOLK
195 LOGS & ½ LOGS
16 FLITCHES
NEW YORK
525 B/S S. SKINS
300 BAGS GUM
492 DRUMS TALLOW

721

106

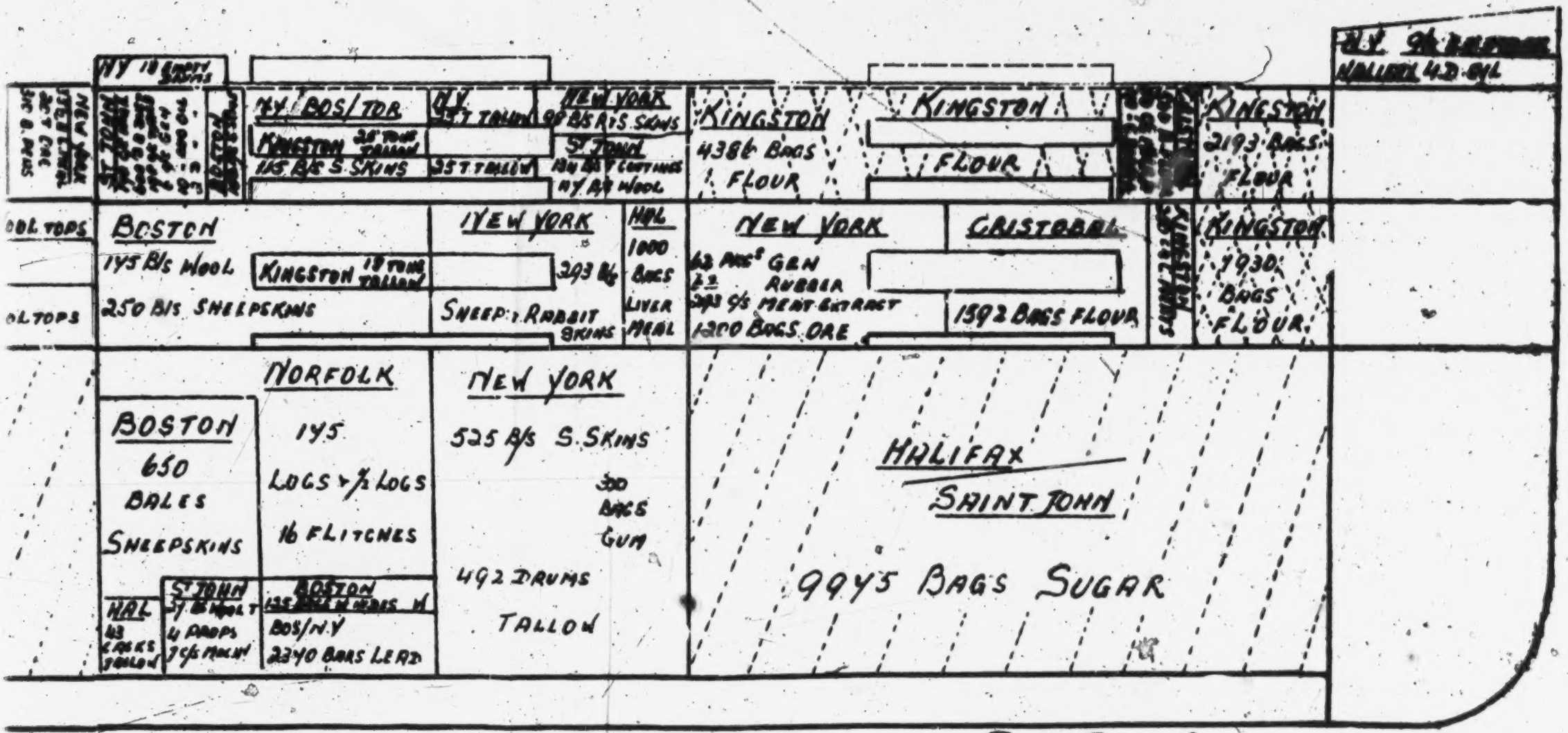
PETITIONER'S EXHIBIT 8.
IN EVIDENCE.

To ~~CRISTOBAL~~ ~~KINGSTON~~ ~~NORFOLK~~ ~~NEW YORK~~ ~~BOSTON~~ ~~HALIFAX~~ ~~SAINT JOHN~~

Sailed 8th Nov 1939

DRAUGHT ON SAILING For'd 21' 00" Aft. 22' 10"

	Tons	STATE HOW DISTRIBUTED
BUNKER COAL		
FUEL OIL	616	
WATER BALLAST		



C. O. Parkinson 26

[fol. 107]

PETITIONER'S EXHIBIT 9 IN EVIDENCE

BOwling Green 9-2878 Invoice Copy Rooms A. 11-15

To CARTER & WEEKES STEVEDORING CO., Dr.
Produce Exchange Annex
2 Broadway
New York, N. Y.

Steamer Pinko, and Owners
Messrs. Norton, Lilly & Co.

Invoice No. #8175
Date Dec. 9th, 1939

To Loading General Cargo				
Meas.	2275 tons			
Weight	1127 "			
	3402 "			
Autos & K. D. Autos				
Meas.	447 "			
Weight	84 "			
	3933 "	@	1.16 per ton	4562.28
Heavy Lifts 5-10 Tons				
To Loading Meas.	43 tons	@	1.40 per ton	60.20
Bar Iron				
To Loading Weight	6 tons	@	1.25 per ton	7.50
Pine				
To Loading Meas.	64 tons			
Weight	439 "			
	503 "	@	1.50 per ton	754.50
Steel Plates				
To Loading Weight	15 "	@	1.50 per ton	22.50
Old Newspapers				
To Loading Weight	1 ton	@	1.30 per ton	1.30
Case Oil at Pier 2 Bush Docks				
To Loading Meas.	215 cases	@	.04 per case	8.60
Structural Steel				
To Loading Meas.	37 tons			
Weight	13 "			
	50 "	@	1.68 per ton	84.00
Bag Cargo Ore				
To Loading Weight	41 tons	@	1.15 per ton	47.15
				$5548.03

[fol. 108] AFFIDAVIT OF NO OPINION

STATE OF NEW YORK,
County of New York, ss:

Edwin V. Hellawell, being by me duly sworn, deposes and says:

That he is the attorney for the petitioner herein and is familiar with all the proceedings had herein and that no Opinion was rendered by the court below in this proceeding.

Edwin V. Hellawell.

Sworn to before me this 6th day of October, 1944.
Ruth A. Sherwood, Notary Public. (Seal.)

[fol. 109] In Supreme Court of New York, Appellate Division, First Department

In the Matter of the Application of Carter & Weekes Stevedoring Company, Petitioner,

For an Order

against

Joseph D. McGoldrick, Comptroller of the City of New York, et al., Respondents

Stipulation Waiving Printing of Exhibits

It Is Hereby Stipulated and Agreed, subject to the approval of this Court, that petitioner's undertaking for the payment of costs in the above proceeding, and Exhibits 3, 4 and 5, Tax Returns for the years 1938, 1939 and 1940, respectively, be omitted from the printed record herein, and

It Is Further Stipulated that the said Exhibits may be referred to in briefs or on argument or handed up to the Court on argument by either party hereto with the same force and effect as if printed in full herein.

Dated, New York, January 5, 1945.

Edwin V. Hellawell, Attorney for Petitioner. Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents.

SJW, ICD.

So Ordered. F. M.

[fol. 110] Stipulation Waiving Certification

It Is Hereby Stipulated that the papers as hereinbefore printed consist of true and correct copies of the order transferring this proceeding to the Appellate Division, First Judicial Department, the notice of application under Article 78 of the Civil Practice Act, petition, answer and return, and all other papers now on file in the office of the Clerk of the County of New York upon which the court below acted in transferring this proceeding to the Appellate Division for determination.

Certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated, January —, 1945.

Edwin V. Hellawell, Attorney for Petitioner. Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents.

[fol. 111] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

In the Matter of The Application of CARTER & WEEKES STEVEDORING COMPANY, Petitioner,

For an Order Against JOSEPH D. MCCOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York, Respondents

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS:

Please Take Notice that the respondents hereby appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March 1945 and entered in the office of the Clerk of said Appellate Division on or about the 10th day of April 1945 annulling the determination of the respondent Joseph D. McGoldrick Comptroller of the City of New York upon the law with $50 costs and disbursements and directing the respondents to refund the amount deposited by the petitioner herein and the respondents appeal from each and [fol. 112] every part of said Appellate Division order as well as from the whole thereof.

Dated: May 1st, 1945.

Yours, etc., Ignatius M. Wilkinson, Corporation Counsel, Attorney for Respondents, Office & P. O. Address: Municipal Building, Borough of Manhattan, New York City.

To: Edwin V. Hellawell, Esq., Attorney for Petitioner, 70 Pine Street, Borough of Manhattan, New York, N. Y.
Archibald R. Watson, Esq., Clerk of New York County.

[fol. 113] IN SUPREME COURT OF NEW YORK; APPELLATE DIVISION—FIRST DEPARTMENT

Present: Hon. Francis Martin, Presiding Justice; Hon. Alfred H. Townley, Hon. Edward J. Glennon, Hon. Irwin Untermyer, Hon Edward S. Dore, Justices.

In the Matter of The Application of CARTER & WEEKES STEVEDORING COMPANY, Petitioner,

For an Order Against JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York, Respondents

ORDER—March 16, 1945

The above-named petitioner having moved at Special Term, Part I, of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Act, for an order [fol. 114] transferring the record of this proceeding to this Court for a review of the final determination of respondent, Joseph D. McGoldrick, that there was due and payable to the City of New York from petitioner a business tax deficiency in the amount of $2,352.75 for the years 1937, 1938, 1939 and 1940, pursuant to Local Law No. 22 of 1937, Local Law No. 20 of 1938, Local Law No. 103 of 1939 and Local Law No. 78 of 1940, said amount including tax and penalty interest and which said amount of $2,352.75 was deposited by petitioner with the City of New York; and the said motion having been granted by order dated May 3rd, 1944, transferring all proceedings and papers herein to this Court for review and determination; and the application to review said determination having been argued in this Court by Edwin V. Hellawell, Esq., of counsel for the petitioner, and by Samuel J. Warms, Esq., of counsel for the respondents; and due deliberation having been had thereon, it is unanimously

Ordered, that the said determination of respondent, Joseph D. McGoldrick, be and the same hereby is in all respects annulled, upon the law, with $50.00 costs and disbursements to the petitioner; and it is further unanimously

Ordered that the respondents, or either of them, upon due service of a certified copy of this order, forthwith refund to petitioner the amount so deposited, viz.: $2,352.75 deposited on February 24th, 1944.

[fol. 115] IN SUPREME COURT OF NEW YORK, APPELLANT DIVISION—FIRST DEPARTMENT

MEMORANDUM OPINION

(Reported in 113 New York Law Journal 1025, March 17th, 1945)

15160. Matter of Carter & Weekes Stevedoring Co., pet. (McGoldrick, res.)—Determination of the Comptroller of the City of New York unanimously annulled, with $50 costs and disbursements to the petitioner, and the respondents directed to refund petitioner's deposit, with interest on the authority of Puget Sound Stevedoring Co. v. Tax Commission (302 U. S., 90). Settle order on notice.

[fol. 116] WAIVER OF CERTIFICATION

It is Hereby Stipulated that the foregoing are correct copies of the notice of appeal to the Court of Appeals, the order of the Appellate Division and all papers upon which said order of the Appellate Division is founded, all of which are now on file in the office of the Clerk of the County of New York; and certification thereof pursuant to Section 170 of the Civil Practice Act or otherwise is hereby waived.

Dated New York, May 9th, 1945.

Ignatius M. Wilkinson, Corporation Counsel, Attorneys for Respondents-Appellants. Edwin V. Hellawell, Attorney for Petitioners-Respondent.

[fol. 117] IN COURT OF APPEALS OF NEW YORK

Present, Hon. Irving Lehman, Chief Judge, Presiding.

In the Matter of the Application of CARTER & WEEKS STEVEDORING CO., Petitioner-Respondent, for an order vs. JOSEPH D. MCGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York, Respondents-Appellants

ORDER SUBSTITUTING ATTORNEYS—June 1, 1945

On reading and filing the annexed certified copy of stipulation dated May 16, 1945, it is

Ordered, that Baldwin, Todd & Lefferts, Esqs., of No. 120 Broadway, New York, N. Y., be and they hereby are sub-

stituted as attorneys for the petitioner-respondent in the above entitled proceeding in the place and stead of Edwin V. Hellawell.

A Copy.

Raymond J. Cannon, Deputy Clerk (Seal of the Court of Appeals).

[fol. 118] In Supreme Court of New York, Appellate Division

In the Matter of the Application of Carter & Weekes Stevedoring Co., Petitioner-Respondent, for an Order

against

Joseph D. McGoldrick, Comptroller of the City of New York, and Ameriindo Portfolio, Treasurer of the City of New York, Respondents-Appellants

Stipulation re Substitution of Attorneys

It Is Hereby Stipulated and Consented that Messrs. Baldwin, Todd & Lefferts of No. 120 Broadway, New York, New York, be substituted as attorneys for petitioner-respondent Carter & Weekes Stevedoring Co. herein in place and stead of Edwin V. Hellawell.

Dated: New York, New York, May 16, 1945.

Edwin V. Hellawell, Attorney for Carter & Weekes Stevedoring Co.; C. E. Dougherty, Pres., Carter & Weekes Stevedoring Co.

[fol. 119] State of New York,
County of New York, ss:

On the 28th day of May, 1945, before me personally came C. E. Dougherty, to me known, who, being by me duly sworn, did depose and say that he resides at No. 388 West Shore Trail, Iparta, New Jersey; that he is the President of Carter & Weekes Stevedoring Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Michael J. Campinello, Notary Public, Kings County.

[fol. 120] IN COURT OF APPEALS OF NEW YORK

Witness, the Hon John T. Loughran, Senior Associate Judge, Presiding. John Ludden, Clerk.

In the Matter of the Application of CARTER & WEEKS STEVEDORING COMPANY, for an Order

against

JOSEPH D. McGOLDRICK, Comptroller of the City of New York & ano.

REMITTITUR—July 19, 1945

Be It Remembered, That on the 11th day of May in the year of our Lord one thousand nine hundred and forty-five, Joseph D. McGoldrick, Comptroller of the City of New York & ano., the appellants in this cause, came here unto the Court of Appeals, by Ignatius M. Wilkinson, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Carter & Weekes Stevedoring Company, the respondent in said cause, afterwards appeared in said Court of Appeals by Edwin V. Hellawell, its attorney

[fol. 121] Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Edmund B. Hennefeld, of counsel for the appellants, and by Mr. Samuel M. Lane, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs. A question under the Constitution of the United States was presented and necessarily passed upon. The appellant contended that local laws No. 22 of 1937, No. 20 of 1938, No. 103 of 1939 and No. 78 of 1940, adopted by the City of New York pursuant to Chapter 873 of the Laws of 1934 of the State of New York, as amended, are not contrary to, or in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States as applied to the taxing of receipts of the respondent from stevedoring operations. This court held to the contrary.

And it is also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said

Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed with costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the [fol. 122] form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE

Albany, July 19, 1945.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk (Seal of the Court of Appeals).

[fol. 123] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK, SPECIAL TERM, PART II

Present: Hon. David W. Peck, Justice.

In the Matter of The Application of CARTER & WEEKES STEVEDORING COMPANY, Petitioner; For an Order Against JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York, Respondents

ORDER ON REMITTITUR—August 10, 1945

The above-named respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, having appealed to the Court of Appeals of the State of New York from each and every part of the Order of the Appel-

late Division of the Supreme Court, First Department, dated the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 10th day of April, 1945, which Order annuls the determination of respondent, Joseph D. McGoldrick, with $50 costs and disbursements to the petitioner, and orders the [fol. 124] respondents, or either of them, to refund to petitioner the sum of $2,352.75, and the said appeal having been duly argued in the Court of Appeals and the said Court of Appeals having ordered and adjudged, on the 19th day of July, 1945, that said Order of the Appellate Division of the Supreme Court, First Department, be affirmed with costs, and a certified copy of the Order of said Court of Appeals having been duly filed in the office of the Clerk of the County of New York,

Now, on motion of Baldwin, Todd & Lefferts, attorneys for the petitioner, it is

Ordered, Adjudged and Decreed that the said Order of the Court of Appeals be, and it hereby is, made the Order of this Court, and the Clerk is hereby directed to enter judgment accordingly.

Enter.

D. W. P., J. S. C.

[fol. 125] In Supreme Court of New York, County of New York

[Title omitted]

Affidavit of Regularity

Samuel M. Lane, being duly sworn, deposes and says:

That deponent is a member of the firm of Baldwin, Todd & Lefferts, attorneys for the petitioner, and is familiar with the proceedings.

That the above named respondents appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945, annulling the determination of respondent McGoldrick.

That the Court of Appeals affirmed the order of the Appellate Division of the Supreme Court, First Department. A certified copy of said order of affirmance is filed herewith.

That petitioner desires that the order of the Court of Appeals be made the order of this Court and that the Clerk be directed to enter judgment accordingly.

[fol. 126] That no other or previous application for the relief sought herein has been made to any Court of Judge.

Wherefore, deponent prays that said order of the Court of Appeals, affirming the order of the Appellate Division of the Supreme Court, First Department, be made the order of this Court, and that the Clerk be directed to enter judgment accordingly.

Samuel M. Lane.

Sworn to before me, this 9th day of August, 1945, Norman Hall Deyo, Notary Public. (Seal.)

[fol. 127] In Supreme Court of New York, County of New York

In the Matter of The Application of Carter & Weekes Stevedoring Company, Petitioner; For an Order Against Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Respondents

Judgment of Affirmance

The above-named respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, having appealed to the Court of Appeals of the State of New York from each and every part of the Order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 10th day of April, 1945, and the Court of Appeals having, on the 19th day of July, 1945, ordered and adjudged that said Order of said Appellate Division be affirmed with costs, and an Order having been duly entered thereon on the 11th day of August, 1945, making said Order of the Court of Appeals the Order of this Court, and the remittitur of the Court of Appeals having been duly filed in the office of the Clerk of the County of New York, and said costs awarded by the Court of Appeals having been

duly taxed by the Clerk of this Court on the 17th day of August in the sum of $130.46, it is, on motion of Baldwin, Todd & Lefferts, attorneys for the petitioner,

[fol. 128] Adjudged that the Order of the Appellate Division of the Supreme Court, First Department, dated the 16th day of March, 1945, and entered in the office of the Clerk of said Appellate Division on or about the 10th day of April, 1945, be, and the same hereby is, in all respects affirmed, and it is further

Adjudged that the petitioner, Carter & Weekes Stevedoring Company, whose address is A-11-13 Produce Exchange, New York, New York, recover of the respondents, Joseph D. McGoldrick, as Comptroller of the City of New York, and Almerindo Portfolio, as Treasurer of the City of New York, each of whose address is Municipal Building of the City of New York, Borough of Manhattan, City of New York, State of New York, the sum of $130.46, costs as taxed, and that said petitioner have execution therefor.

Dated: New York, New York, August 28, 1945.

Archibald R. Watson, Clerk.

[fol. 129] In Supreme Court of New York, New York County

[Title omitted]

Affidavit of No Opinion

State of New York,
County of New York, ss.:

John F. Kelly, being duly sworn, says that he is the Assistant Chief Clerk in the office of the Corporation Counsel of the City of New York, the attorney for the respondents-appellants in the above cause.

Deponent says that no opinion was written or handed down by the Court of Appeals in deciding the appeal in this cause.

John F. Kelly.

Sworn to before me this 28th day of September, 1945. Harry Stockfeder, Notary Public, Kings County, N. Y. (Seal.)

[fol. 130] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 131] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 19, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

[fol. 132] [Endorsed on Cover:] File No. 50,221. New York, Supreme Court, Term No. 518. Joseph D. McGoldrick, Comptroller of the City of New York, and Almerindo Portfolio, Treasurer of the City of New York, Petitioners, vs. Carter & Weekes Stevedoring Company. Petition for writ of certiorari and exhibit thereto. Filed October 17, 1945. Term No. 518, O. T. 1945.